PROBLEMS IN THEOLOGY

II: THE COMMANDMENTS

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FOREWORD

When this compilation of questions and answers on theological problems was undertaken, it was decided at an early stage, in view of the quantity of material available, that the work should be presented in two volumes. The reception accorded to the first volume which dealt with problems in the theology of the sacraments, the continued requests, indeed the impatient insistence of many friendly readers, as well as the enthusiastic support of the publishers greatly encouraged the work of preparing this second volume which covers the principles and the precepts. The work proved more tedious and more difficult than was anticipated and it was considerably interrupted by other preoccupations.

The general pattern of the first volume has been retained. That is to say the questions and answers are set out, more or less, as they appeared originally in the *Irish Ecclesiastical Record.* There has, of course, been considerable abbreviation at points. Yet some of the questions remain rather lengthy. This is of set purpose. It was felt that by retaining them in this form a certain focus and actuality would be given to the discussion. A few of the questions included had special relevance to particular crises : they were thrown up by the circumstances of an exceptional period. Inasmuch, however, as it is unfortunately possible that somewhat similar circumstances may arise in the future, it was thought that these questions and replies should be retained. But they have been pruned so as to place the emphasis on the principles and precepts involved, rather than on the exceptional circumstances, and thus it is hoped that the discussion will have a wider reference and value.

In this volume, as in the first, to avoid the necessity of a too frequent cross reference, an effort was made to make each reply self-contained—apart, of course, from replies which are part of a controversial series and in which, naturally, there must be a sequence and link-up.

The main portion of this volume has been divided along lines which, rightly or wrongly, have come to be widely accepted in text-books of Moral Theology—that is on the basis of the Commandments of the Decalogue and the Precepts of the Church. A miscellaneous section on dogmatico-moral problems has been added.

The grateful thanks of the author are due, in a very special degree, to Father John Corkcry, Librarian at Maynooth College, who undertook the onerous task of preparing a detailed index for the two volumes. Particular mention should also be made of the continued courtesy, helpfulness and efficiency of the publishers and their staff.

This volume is presented to the public in the earnest hope that readers, clerical and lay, may find in it something of interest, enlightenment and help in the analysis and solution of problems—so many of which are the common currency of human living.

John McCarthy.

The feast of St. Michael the Archangel, 1959.



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SECTION I

HUMAN ACTS

PAPAL ADDRESS ON THE NEW MORALITY[1]

In an address, to the World Federation of Catholic Young Women, Pope Pius XII condemned a theory of morality which had gained currency even in some Catholic circles. This theory might be described as ' ethical existentialism,' ' ethical actualism,' ' ethical individualism.' The distinctive characteristic of this new moral theory is that it is not based upon any universal moral principles or laws ; it is related entirely to the real concrete individual circumstances in which men must act. The individual conscience, untrammelled by moral principles, makes a judgment or a choice on the basis of these circumstances. Each set of circumstances, and each judgment, is individual, personal and unique, and applies only once for every human action. These judgments of conscience, if seriously and sincerely made, have a primacy in the eyes of God over all precept or law with which they may be in conflict. God is concerned only with the right and sincere intention : He is not concerned with the external action—so the advocates of the new theory argue. This argument would lead logically to a total denial of any objectivity in moral judgments. Each individual judgment of conscience is claimed to be unique. Even in the same concrete circumstances there would not be for two different individuals, or even for the same individual on two different occasions, any constant or consistent rule of action. An individual might judge that, in his particular concrete circumstances, divorce, birth prevention, even abandonment of the Faith, would be lawful—if he decided that these actions would bring him closer to God.

The Holy Father pointed out how grossly and how obviously this new morality conflicts with the very fundamentals of Catholic faith and morals. According to Catholic teaching the moral law is universal. And such a universal law covers the circumstances of every individual case. That is true of all moral laws, and is particularly true of the negative precepts. The fundamental obligations of the moral law rest upon the

[1] *A.A.S.,* xliv (1952), pp. 452-3.

essential nature and relations of man and, consequently, they are valid for all men everywhere. The fundamental obligations of Christianity, to the extent that they go beyond those of the natural law, are based upon the essence of the supernatural order established by Christ. By reason of the essential relationships between man and God, between man and man, between husband and wife, between parents and their children; by reason of the essential community relationships in the family, in the Church, and in the State, it follows that certain things are intrinsically wrong and are gravely forbidden by the Divine Redeemer. Such things are: hatred of God, blasphemy, idolatry, abandonment or denial of the true faith, perjury, murder, bearing false witness, calumny, adultery, fornication, the abuse of marriage, solitary (sexual) sin, theft and robbery, depriving one of the necessities of life, denying workers their just wage, monopolizing vital foodstuffs, unjustifiable increase of prices, fraudulent bankruptcy, unjust manipulation of speculation. No matter what the individual circumstances may be, the law of God forbidding all these must be obeyed. There is no need for any examination or for any 'unique' individual judgment.

As against the teaching of 'ethical existentialism' the Holy Father then set out three maxims of Christianity. Firstly, it is true that God wants, primarily and always, a right intention. But this is not enough. He also wants the good work. As a gloss on this, it is interesting to note how the wheel of opposition to Christian teaching has gone full circle. In combating the forensic morality of the Scribes and Pharisees, Christ had to emphasize the value of the internal act, the motive and intention, and the insufficiency of the external deed unless it is inspired by the proper motive. To-day the Church has to vindicate against the new ethic the insufficiency of the internal act unless it manifests itself in the appropriate external good work. The second maxim recalled by the Holy Father is that it is not permitted to do evil that good may result. The new ethic, perhaps unknowingly, is based on the principle that the end justifies or sanctifies the means. The third maxim is that there may be situations in which a man, and especially a Christian, cannot be unaware that he must sacrifice everything, even his life, in order to save his soul. The martyrs of all time remind us of this.

The Holy Father went on to deal with the problem of forming the individual conscience in accordance with the law of God and of His Church. In matters regarding which there are no absolutely obligatory norms—these are independent of every

eventuality—Catholic moral teaching has always taken due account of the particular circumstances and of the personal elements. Speaking of the teaching of St. Thomas on the cardinal virtue of prudence and its associated virtues, the Pope said :

> Son traité montre un sens de l'activité personnelle et de l'actualité, qui contient tout ce q'il y a de juste et de positif dans ' l'éthique selon la situation, tout en évitant ses confusions et déviations. Il suffira donc au moraliste moderne de continuer dans la même ligne, s'il veut approfondir de nouveaux problèmes.

Christian education of conscience does not ever ignore the personality. Indeed the aim of all healthy education is to give the student a sense of personal responsibility and independence within just limits. Thus the aim of Christian education is to form the ' perfect man ' who will assume the responsibility of showing forth in his personal, professional, public and social life the truth, the spirit and the law of Christ.

> C'est cela la morale catholique, et elle laisse un vaste champ libre à l'initiative et à la responsabilité personnelle du chrétien.

IMPUTABILITY OF EFFECTS VOLUNTARY IN CAUSE

I should be most grateful for an answer to the following difficulties.

(i) ' Non raro contingit propter adiuncta ita coniungi hanc causam effectu pravo, ut quicumque illam voluntarie ponit, illi etiam effectus ascribatur . . .' (Genicot, *Th. Mor.,* i., n. 14 bis par. 3°). Does not that text imply imputability of the full effect, with its specific malice, as in the case of a *causa per se* ?

(ii) ' Si novi aliquem pauperem solere eleemosyna sibi data abuti ad sese inebriandum, *caritas* saltem iubebit ab ea danda abstinere . . .' (Genicot, loc. cit.). Why ' saltem ' ? Does the author imply that *probabiliter* also the virtue of temperance ' iubebit ab ea danda abstinere ' ?

If, from experience, I know that this beggar when drunk will cause scandal, beat his wife—are such scandal and such violence imputable to me ?

(Hi) ' Ei, qui praevidens se in ebrietate commissuram esse homicidium se inebriat et hominem occidit, mors imputatur.' (Noldin, *De Principiis,* n. 85, 2.)

' Mere praevisa pollutio ei qui se inebriat non imputatur. (Vermeersch, *Th. Mor.* i, n. 128, 4.)

In both these cases the circumstances are the same, it appears, *(inebriatio cum praeviso effectu malo ex causa per accidens).* How

is there imputability of homicide in the first case and no imputability of pollution in the second *l* This is the argument of Vermeersch : ' Effectus malus positive permissus et praevisus imputatur, quatenus ab actione abstinendum est ne effectus ille sequatur. Fieri itaque potest ut non imputetur, etsi mala sit actio quam sequitur. Sic ebrietas vetatur lege temperantiae, non autem ne sequatur pollutio. Ergo mere praevisa pollutio ei qui se inebriat non imputatur.' If we substitute ' homicidium ' for ' pollutio ' should not Vermeersch lead us to conclude : ' . . . homicidium . . . non imputatur '—a conclusion which seems called for by the principle and example of Noldin (op. cit., n. 82, 2) as well as by the third condition stated in Genicot (op. cit., n. 13) for imputability of evil effects, also by the similar case of pollution *(semper aut fere semper)* from a ' causa per accidens '?

(iv) If I deliberately walk, without sufficient reason, along a road where I know an attempt will be made on my life, am I guilty of sin, not only against charity, but also against the Fifth Commandment as a *causa per accidens* ?

Mendicus.

We are not surprised at our correspondent's difficulties regarding the teaching of moralists on the imputability of effects which are voluntary in cause. It is a difficult and delicate subject. It is not easy for any theologian to give completely satisfactory answers to all the questions which can arise under this head—questions which may be partly psychological as well as moral. Our correspondent's difficulties mainly concern the meaning and reconciliation of the statements of authors. But if we were to attempt to give a really adequate reply to ' Mendicus,' we should have to discuss at length the background of the statements—the teaching which lies behind the specific points raised. Considerations of space and time effectively inhibit any such full discussion here ; so we shall, for the most part, confine ourselves to an examination of the particular difficulties quoted from the writings of theologians. It will not be possible, however, to prescind entirely from some reference to the background and the wider issues.

(i) The answer to our correspondent's first question, regarding the implication of the text cited from Genicot, is in the affirmative. In the context, the author is dealing with the imputability of evil effects which are voluntary in cause. He has distinguished between a *causa per se* and a *causa per accidens.* If the evil effect of a *causa per se* is, in fact, imputable, then the agent, in acting, incurs the specific malice of this evil effect. Why ? Because a *causa per se* has a natural *nexus* with, and somehow contains, its effects—and thus, so to speak, the specific malice of the effect

is projected forward to its cause.[1] If, however, the cause placed by the agent is only a *causa per accidens* then, normally, one may say, the *specific* malice of the evil effect will not be imputed. Again, why ? Because in this case the effect is not contained in, has not a natural *nexus* with, the cause placed. Often, at the risk of causing confusion we might say *per se,* the *causa per accidens* is not the *cause* of the effect in any real sense, but rather the occasion of the effect. This is only another way of stating that between the *causa per accidens* and the effect we are considering, there is often only a *nuda connexio* not a *connexio causalis.* Sometimes, however, *propter adiuncta,* the causal connection is established—for the *adiuncta* may imply a special obligation to avoid the placing of the cause, precisely lest this effect should follow. Thus the words *propter adiuncta* in the quotation are operative words. The author's meaning becomes fairly clear if two statements made by him are placed side by side. These statements are :[1]*

(1) Numquam contrahitur malitia specifica huius effectus ob nudam connexionem cum positione causae ; (2) Non raro contingit propter adiuncta coniungi hanc causam cum effectu pravo. . . .

It is obvious that thus far we have been concerned to elucidate the teaching of Genicot—and this, as we have noted, is the primary task we have been set. But we cannot ignore the fact that a veritable host of other questions arises from a consideration of this teaching. It may help to a clearer understanding of Genicot, and to a more ready solution of the subsequent difficulties proposed, if we consider briefly, at this point, a few of these fundamental questions. Firstly, there is the distinction made by writers between a *causa per se* and a *causa per accidens.*

Causa per se est ea quae ex sua natura tendit seu ordinatur ad effectum producendum.'

It may be a *physical* or a *moral* cause.

Causa per accidens ea est quae, licet non ordinetur ex natura sua ad effectum producendum, attamen aliquando, interveniente re aliqua, ad illum ducit.[4]

This distinction is of very great importance when writers come to consider the conditions that are required in order that an effect be regarded as voluntary in cause and imputable. It is true that both those effects which follow from *causae per se* and

[1] The malice is contracted principally when the act is placed—but partially *(consummatwe')* when the evil effect actually follows.

[*] Loc. cit.

[§] Cf. Walsh, *De Actibus Humanis,* n. 91.

[4] Ibid.

those which follow from *causae per accidens* may be thus voluntary and imputable as such.[1] But it is very natural and reasonable that an agent should less easily be held responsible for effects which follow from *causae per accidens.* Which is all only another way of saying that additional conditions (over and above those required when there is a *causa per se)* arc required in order that the effect of a *causa per accidens* be attributed as voluntary and imputable to the agent who placed the cause.[1] We have remarked earlier that, in itself, the *causa per accidens* docs not naturally contain, or lead to, this particular effect. Prescinding from extrinsic circumstances and factors *(adiuncta* of Gcnicot), there is no real causal *nexus,* but only a kind of juxtaposition or sequence between the *causa per accidens* and this effect. And unless there is some causal connection between the act, voluntarily placed by the agent, and the effect, the latter cannot be said to be voluntary as such, that is, *qua* effect, to proceed spontaneously from an intrinsic principle with due knowledge. If an effect is not voluntary, *in se* or *in causa,* its specific malice cannot be imputed. In the order of causality, the *nexus* between cause and effect is established by the very nature of things in the case of a *causa per se·,* it must be established, at least in a moral sense, by extrinsic factors when the cause is only a *causa per accidens.* So we find it stated by theologians generally[3] that when there is question of a *causa per se,* its effect is voluntary in cause if it is foreseen, even confusedly, by the agent as following from this cause freely placed ; that when a *causa per accidens* is in question a further condition is required in order that the effect be described as voluntary in cause.

This further condition is that there must be an obligation of avoiding the effect, of not placing the act lest *this* effect should follow. Merkelbach, for instance, states the position in the following terms :[4]

> Ut effectus sit voluntarius in causa requiritur 1° ut effectus praevisus aliquo modo fuerit . . .; 2° ut vitari potuerit, et ideo ut causa libere posita fuerit . . .; 3° ut adsit nexus causalitatis inter hanc causam libere positam

[1] In all this discussion we shall be concerned only with the imputability of *evil* effects. Good effects are not imputed unto merit unless they are somehow intended. And if they are intended they are voluntary *in se.* The obligation to avoid evil is ever present and hence, apart from intention, undue failure to avoid it is imputable unto blame. Of. Noldin, *De Principiis,* n. 81.

[1] We do not consider here the case in which the evil effect is intended, as a means or as an end—for then the effect would be voluntary *in se* and its imputability obvious.

[3] Of. Walsh, op. cit., nn. 92-100 ; Jorio, *Th. Mor.,* i, 7.

[4] *Th. Moralis,* i, n. 63, cf. n. 172. Italics are author's.

et hunc effectum ; quod (a) vcrificatur semper de *cauta per te* si duae priores conditiones adsint : qui enim vult causam censetur velle effectum qui naturaliter et necessario ex ea sequitur ; (A) vcrificatur etiam de *causa per accidens* dummodo insuper adsit tertia conditio, ut *effectus vitari debuerit,* seu ut adfuerit obligatio non ponendi causam, et quidem non *ponendi ne sequatur effectus :* cum enim effectus in tali causa non sufficienter contineatur (nisi mediante alia causa) ac proinde nexus physicus non adsit cum effectu, si dicta obligatio desit, deest omnis nexus causalitatis, etiam moralis, inter causam et effectum, ac proinde effectus non erit volitus nec voluntarius in causa, sed tantum permissus. E contra si quis tenetur causam non ponere ne sequatur effectus, et nihilominus ponit, censetur moraliter et imputabiliter esse causa huius effectus.

(ii) In the context of this quotation, it is presupposed by the author that the donor, in the circumstances, has no proportionate reason for giving this alms[1] and so it is concluded that the giving of it, since it is foreseen that it will be sinfully abused, is *at least* a violation of charity. But it might also be some other kind of sin. If, for instance, a father or one *in loco parentis,* gave money to a child under his care foreseeing that the child would use it to buy drink and to become drunk, there would be the sin of dereliction of parental duty. Could the giving of alms to the beggar, in the circumstances mentioned by our correspondent, be a sin against temperance, *ex parte dantis eleemosynam ?* We are not considering here the case in which the donor intends the drunkenness of the beggar as a means or as an end—for in this case, as we remarked earlier, the intemperance is voluntary *in se* and imputable as such. But even apart from any such intention the giving of alms to one who, it is foreseen, will misuse it to get drunk, could be a sin of intemperance if the donor were bound, by some special reason, particularly to avoid being the occasion of intemperance. To take the most obvious theoretic example : suppose the donor had taken a vow never to be the conscious cause of intemperance in others. But there may not be any such special obligation. Often there will not. And so oftentimes, very often in fact, the almsgiver who foresees that his alms will be misused by the beggar to get drunk is not guilty of a sin against temperance—though he may sin against charity if there is no good reason for his giving the alms in the circumstances.

Similarly if the giving of alms to one beggar will cause another, who is refused for some good reason, to blaspheme, the donor will not be held responsible for the blasphemy, even though he clearly foresaw it—nor, indeed, will he violate charity if there

[1] * Cum supponatur me nullam habere rationem proportionatam ad dandum.* If the donor had such a proportionate cause he would be justified in acting.

is some good reason, as there often will be, for his giving the alms.[1] 'Mendicus' is well aware that the commonly accepted and, *pace* St. Alphonsus,[2] the more acceptable view, is that in indirect scandal there normally is but a single malice—the malice of a sin against charity.[3] The malice of the specific sin committed by the person scandalized is not imputed to the giver of indirect scandal. But in direct scandal there is a two-fold malice. The special precepts of the virtues do forbid us directly to entice or cause others to violate them. These special precepts do not, *per se,* forbid acts which may be the occasion of indirectly leading others to violate the virtues. It is only charity which forbids these acts in certain circumstances. And, as Walsh remarks,[4]

> Actio, alioquin in se omnino licita, aliquando illicita evadit ex eo quod effectus malus praevidetur inde secuturus. . . . Obligationis huius fons duplex esse potest: (a) commune fraternae charitatis praeceptum quo prohibetur ne quis alteri praebeat occasionem peccandi, ac, *(b)* speciale praeceptum illius virtutis v.g. iustitiae, temperantiae, religionis etc. cui adversatur malus effectus de quo agitur; quaevis enim virtus dum *primario* prohibet ea quae ipsi directe adversantur, *secundario* prohibet alia quae, etsi in se omnino licita, tamen causae sunt ex quibus profluunt effectus qui primaria virtutis obligatione prohibentur. . . . Neque tamen commune praeceptum charitatis, neque speciale praeceptum alius virtutis, ita in universum obligat ut nunquam liceat quidpiam agere ex quo malum praevideatur sequi.[5]

(iii) 'Mendicus' thinks he sees a contradiction between the teaching of Noldin and that of Vermeersch. He need not have gone to Vermeersch for his second quotation. He could have found the same teaching, almost verbatim, in the works of Noldin. The latter writes:[6]

> Si quis se inebrians praevidet pollutionem in ebrietate secuturam, inebriatio in se est grave peccatum, ratione luxuriae autem leve, quia leviter tantum in eam influit.

And almost in the context from which the first quotation is taken we find the words:[8]

> Pollutio mere praevisa ex certo ciborum genere non imputatur, quia non est obligatio specialis vitandi certos cibos ob pollutionem secuturam.

Our correspondent is clearly aware of this text. Thus, if there

[1] Cf. Walsh, op. cit., n. 91.
[2] *Th. Mor.,* l. 2, n. 45.
[3] Cf. Waffelaert, 'L'espèce morale du scandale.' On p. 145 we read 'Tout scandale contient une espèce contre la charité. . . . Le scandale indirect n'est pas, généralement parlant, un péché de même nature que celui auquel il donne occasion.'
[4] Op. cit., nn. 115, 118.
[5] *De Sexto Praecepto,* n. 14, a.
[6] *De Principiis,* n. 82, 2.

is a contradiction in the statements quoted in the query, not merely is Noldin contradicted by Vermeersch, but the former contradicts himself. That, however, is somewhat beside the point of the query. The texts quoted give the commonly accepted teaching regarding the imputability of pollution and homicide which are foreseen to take place in the state of drunkenness.[1] And the point is: why the difference in the degree of their imputability?[2] The degree of the imputability of an effect depends upon the nature of the cause from which the effect follows. The principle is often stated thus:[3]

> Effectus in causa voluntarius eo gradu malus erit quo mala est ipsa causa—in quantum est causa.

Or as Davis briefly put it,[4*] 'the effect is evil in the degree in which the cause is evil.' Applying this principle to the question of *luxuria* we reach the generally accepted conclusion:

> Delectatio venerea indirecte seu in causa volita tantum est peccatum, quantum est ipsa causa in genere luxuriae. Si ergo causa grave peccatum est in genere luxuriae, effectus turpis delectationis in grave peccatum, si causa in genere luxuriae peccatum leve est, effectus delectationis in leve peccatum imputatur. Iam vero grave peccatum in genere luxuriae est quaelibet actio, quae natura sua in excitandam libidinem graviter influit et ita quasi inchoatio illius est; in genere luxuriae leve peccatum est actio, quae natura sua leviter tantum in excitandam libidinem influit.[6]

Now while drunkenness may be a grave sin of intemperance, it is not a grave sin *in genere luxuriae.* Hence even though it is foreseen that pollution will take place as a result of over-indulgence in intoxicating drink, this pollution will not be imputed as a grave sin. When it is stated that drunkenness is not a grave sin *in genere luxuriae* it is meant that it does not proximately and gravely incite to venereal pleasure.

It will be in place to add here that the statement in the query quoted from Vermeersch might be completed by the words *ut grave peccatum*—because if a man takes, without any excusing cause, an excessive quantity of drink, foreseeing that pollution will occur while he is drunk, such pollution will be venially imputable as arising from a cause freely and needlessly placed which remotely or lightly influences its onset. The writers speak of pollution occurring, taking place—or in some

[1] Davis, *Moral and Pastoral Theology,* ii, p. 215.

[2] We are here asking the question: To what extent are these acts imputable? rather than the question: Are they imputable?

[3] Cf. Mcrkelbach, *De Castitate,* p. 34. St. Alphonsus, *Th. Mor.,* l. iii, n. 484, notes that pollution is not a grave sin unless it is the effect of a cause which is a mortal sin *in genere luxuriae.*

[4] Loc. cit.

[6] Noldin, *De Sexto Praecepto,* n. 12.

such terms—not of its being caused. Pollution will occur from time to time as a natural physical phenomenon apart from any inebriation—though, as we have mentioned, this latter condition may have some influence on its onset. The case *of* homicide is entirely different : it never occurs as a natural phenomenon, as an ordinary process of nature. The fact that it takes place, or is committed, while the agent is under the influence of drink shows that the state of inebriation is its proximate cause. Presumably, *ex hypothesi* in fact, it would not occur if the man remained sober. Accordingly, if a man foresees that while he is drunk he will commit a murder, he is bound to refrain from becoming drunk, not merely because drunkenness is a sin, but also lest the murder should follow. If he does not abstain, in these circumstances, and the murder does take place, then it is imputable to the agent as having knowingly and freely placed its cause in defiance of an obligation to abstain from doing so precisely lest this effect should follow. Merkelbach, having stated the axiom that an effect which is voluntary in cause is not more culpable than its cause, considered as a cause, makes the following very relevant applications.[1]

(I) Causa quae *per se, proxime et graviter influit* in effectum malum praeter malitiam propriam quam forsan ex se habet, acquirit insuper malitiam gravem vel levem effectus ; unde causa per se graviter mala, quae proxime influit in effectum leviter malum, habet malitiam levem superadditam ; e contra causa per se leviter mala, quae proxime influit in effectum graviter malum, inde habet malitiam gravem. (2) Causa quae *per se sed leviter et remote,* aut nonnisi *per accidens* influit in effectum etiam gravem, *ratione influxus* non contrahit nisi malitiam levem, v.g. si ex sumptione immoderata cibi vel ex ebrietate vel ex delectatione morosa non protracta sequatur pollutio. Parvus influxus scii, in rem gravem ex se non est aliquid notabile. Habet tamen talis causa gravem malitiam *ratione effectus,* si iste *stricte* prohibetur ita ut omnia sint vitanda quae ad eum etiam leviter concurrunt (uti fit in re iustitiae, ne damnum grave proximo inferatur), aut si ratione officii vel status adsit *specialis* obligatio effectum vitandi. Ita ebrietatis influxus in pollutionem est leviter, in homicidium est graviter culpabilis.

(iv) A person who, without a sufficient cause, walks deliberately into a place in which he knows that an attack will be made upon his life is guilty of a sin against the fifth commandment. This commandment binds us to take ordinary means to preserve our lives. It forbids not merely the direct taking or shortening of human life but also all wanton and needless exposure of that life to danger—even when that danger comes from the free acts of other men. Indeed it could be held that

[1] *Th. Mor.,* i, n. 174. Italics are author's.

there are circumstances in which one who deliberately and needlessly exposes himself to the risk of attack on his life by other men is more than the *causa per accidens* of this attack. His action might possibly be described as a *causa per se moralis,* a kind of *agence provocatrice.* But even if we consider the action as being only a *causa per accidens* of the attack, our conclusion would still stand because of the obligation of the person to avoid this walk precisely lest the evil effect, the foreseen attack upon his life, should be made. Thus the causal connection is established. The foreseen evil effect, which is avoidable and which should be avoided, is voluntary in cause and is imputable with its specific malice of a sin against the fifth commandment.

REFLEX PRINCIPLES. EXTRINSIC PROBABILITY

(i) In given circumstances Peter is used to beat his wife. To-day the same circumstances occurred, but it is doubted whether he beat her again or not. Are we allowed to act on the principle * Judicatur ex ordinarie contingentibus ' or should we apply the principle ' Factum non praesumitur, sed probandum est ' ? When should we use the one and not the other ?

(ii) When, in a manual or review, an opinion is expressed on a point which is not considered by the authors whom I know, am I justified in following that opinion though I do not agree with it ?

Mendicus.

(i) It must be remembered that reflex principles simply point the way to a presumption *(rei incertae probabilis conjectura}* when direct solution of a doubt is not, in the circumstances, morally possible.[1] The application of the principle gives a working conclusion which, however, may objectively be false. Our correspondent refers to two recognized reflex principles for this practical solution of doubt—two principles which, when applied to a particular case, would lead to contradictory conclusions. Obviously, then, both principles should not be applied to the same case. Each has its domain—though, admittedly, it is not always easy to delimit this domain exactly. It seems to us that the principle : 'In dubio factum non praesumitur sed probandum est ' is principally applicable in the domain of the external forum. It has primary reference to external acts

[1] Cf. Priimmer, *Th. Mor.,* i, nn. 331 et seq. ; Noldin, *De Principiis,* n. 252.

or to the external elements of mixed acts. It has as its counterpart and, in a sense, as a corollary, the principle: 'In dubio standum est pro valore actus.' We would say, then, that the second principle quoted by 'Mendicus' applies primarily in the juridical sphere.[1] It is, so to speak, a reflex principle of law. On the other hand the statement 'In dubio judicandum est ex ordinarie contingentibus' seems primarily to express a moral principle—a reflex principle of moral theology. Its zone of application, accordingly, is the internal forum. It has a more personal, more intimate reference. For instance, if it remains doubtful whether a penitent who has been seriously tempted by evil thoughts has consented to them, the doubt is to be solved in accordance with the customary attitude of the penitent in face of such temptations. This reflex principle should not be applied to external acts, especially when there is question of the external violation of law or commission of crime.[2] To apply it thus would imply an inversion not unlike that contained in the alleged *dictum* of the superior to the student charged with violation of rule: 'Not only did you do it, but you were capable of doing it!'

(ii) We presume that our correspondent means that the point (and not merely the opinion) has not been discussed by other authors. The fact that a particular opinion on an undiscussed point has not been rejected by others is surely, of itself, a negative commendation. The opinion of any one author is, normally, worth as much as the arguments on which it is based. It does not, *per se,* constitute extrinsic probability.[3] It must, of course, be conceded that extra weight should be given to the opinion of a reputable author on a point of which he has made a special study, and the fact that others have not studied this point should, obviously, not be construed against him. It will often be possible for the reader of such an opinion to decide whether or not it accords with principles known to be true and whether it logically fits in with the analogy of received doctrine. If the individual opinion seems to fit in in this way; if it is based on good, sound, though not necessarily altogether convincing, arguments and is given by one who is known to be, or who may be presumed to be, an expert on the particular subject, then it may safely be followed by the reader—even

[1] Many of the writers make no attempt adequately to distinguish the types of case to which the various reflex principles are applicable.

[2] There is another reflex principle which runs 'In dubio delictum non praesumitur sed probari debet.'

[3] Cf. Noldin, op. cit., n. 238; Genicot, *Th. Mor.,* i, n. 66.

though he himself disagrees with the opinion. This is not to contravene the doctrine implied in the condemnation by Alexander VII of the following proposition :

Si liber sit alicuius iunioris et moderni debet opinio censeri probabilis dum non constet reiectam esse a Sede Apostolica tamquam improbabilem.[1]

We are concerned here with the situation in which a point is considered, apparently for the first time, by a reputable authority who gives good reasons for his opinion.[2] If, however, the opinion expressed by the individual writer, who alone discusses the point, seems out of harmony with the general economy of accepted teaching on kindred matters, that is, if the opinion seems revolutionary or if it is seen to be based upon a false process of reasoning, then clearly it may not safely be followed.

THE NATURE OF EXTRINSIC PROBABILITY

In a reply dealing with the incurring of the penalty for the absolution of an accomplice you wrote : ' The view of this latter group of theologians is, theoretically speaking, much the better. It has very strong arguments in its favour. The arguments for the other view seem weak—yet, in deference to the authorities who hold it, we must regard it as extrinsically probable.'

I had been led to believe that extrinsic authority depended upon the intrinsic value of the arguments presented by the authors in question. Merkelbach, *Summa Theologiae Moralis,* ii. n. 101, would seem also to confirm this view when he asserts, after discussing the nature of extrinsic authority : ' Haec supponit intrinsecam, et eo usque durat quousque illa praesumi potest, nam ideo admittimus quod alii affirmant quia eos doctos et veraces habemus ; quodsi eos in errore versari constet aut fundamentis omnino debilibus inniti, eorum auctoritas pro hoc casu evanescit.' Moreover, he cites St. Alphonsus, *Theologia Moralis,* I. i. n. 80, to the same effect : ' Vis rationum intrinseca principaliter attendi debet ; auctoritas enim extrinseca non aliud operatur, quam afferre vis intrinsecae praesumptionem.'

Although in the case discussed by you it cannot be stated that the opinion of the authors cited *in errore versari constet,* still it does seem to be your conclusion that this opinion is *fundamentis debilibus inniti.* And yet it is affirmed that the opinion is endowed with extrinsic probability.

G. F. B.

[1] Denz. 1127.

[2] Extrinsic probability is always based upon some degree of intrinsic probability.

Extrinsic probability is based upon the authority of authors.[1] And a view is said to be extrinsically probable when it is propounded as such by theologians generally, or by five or six expert and approved authors, or even by one of the great theologians[2]—especially if it concerns a point of which this writer has made a special study—provided always, of course, that the teaching authority of the Church has not made any contrary declaration.[3] The particular value of extrinsic probability is that it can be appreciated, and availed of, by non-experts, whereas only one with a good training in theology is capable of estimating intrinsic probabilities.

Our correspondent is correct in stating that extrinsic probability must ultimately be based on intrinsic probability, that is, on arguments and reasons which emerge from an examination of the principles of theology in relation to the point in question. For, obviously, no serious theological expert would, on his own authority, put forward as probable a view for which there did not appear to him to be good arguments. But different theologians may be variously impressed by the merit, or probative value, of particular arguments. There is room here for a certain individuality of approach and reaction. In this respect Moral Theology is a particularly human science. We do not at all imply that it is a merely subjective analysis. There are, of course, objective principles and criteria. But in difficult matters, regarding which there is room for free discussion, different viewpoints and conclusions may frequently be expressed. When doubtful issues are being discussed our correspondent will frequently have seen a particular view described as *longe probabilior*—and yet there will be no denial of the status of a probable opinion to the opposing view. On the contrary, there is in fact implicit affirmation of this status. There must, indeed, be questions on which our correspondent himself has adopted this attitude. Now when an author describes a view as *longe probabilior* he must imply, if words mean anything, that the arguments for this view seem to him to be much stronger than any which are advanced for the opposite view. Or, to put it the other way round, these latter arguments must seem weak—at least by comparison or contrast.

In the light of all this, we may examine our statement quoted

[1] Cf. Priimmer, *Th. Mor.,* i, n. 342.

[2] Cf. Priimmer, loc. cit.; Noldin, *De Principiis,* n. 238. As Merkelbach notes, 771. *Mor.,* ii, n. 101, priests should remember: 'Non tam ex auctorum numero quam ex eorum merito diiudicanda est extrinseca probabilitas: non tam numerandi sunt auctores quam ponderandi.'

[3] Cf. Priimmer, loc. cit., 'tolerante Ecclesia.'

in the correspondent's query. It will be noted that we said that the arguments for a certain view seemed weak. The context clearly suggested a contrast with the strong arguments which, we believed, supported the opposing view. We were, of course, expressing our own reaction to these arguments. But we may add here that Cappello states a somewhat similar reaction

Sententia affirmativa speculative longe probabilior est; sed negativa *practice* tuta, ad nonnam can. 15 et 209, dici debet.

Our statement that 'the arguments for the view seem weak' is not at all equivalent to Merkelbach's assertion that 'it is clear that (the supporters) of the view rely on utterly weak foundations.' This latter is a categoric statement implying certainty—even objective certainty—regarding the inadequacy of the arguments. We found that the view which seemed to us to be based on weak (or the weaker) arguments was held by writers like St. Alphonsus, Bucceroni, Genicot, Aertnys-Damen, Jorio—and, indeed, we might have listed more, equally striking, names. In the absence of any authoritative decision, what was more natural or more reasonable than to assume[2] that these authorities regarded their arguments, however these seemed to us, as, at the least, sufficient to make their view solidly probable? Otherwise, surely, they would not have put forward their view as tenable. Hence we stated that we must regard this view as extrinsically probable. It would be a very gross presumption on the part of any individual theologian to assert categorically, against all opposition, that he has the only valid arguments on his side, and has found the final solution to a question still disputed, and variously answered by different authorities.

THE ADVERTENCE NECESSARY FOR GRAVE SIN

This question concerns the advertence necessary for grave sin. Two young people who are keeping company commit immodest actions which are objectively mortally sinful. But the idea of mortal sin does not occur to them. Are they guilty of grave sin? Let the further supposition be made that those young people normally know quite well that the actions in question are gravely sinful. They meet unintentionally, are strongly attracted to one another for the moment and start the gravely immodest actions which they continue for some

[1] *De Sac.* ii, n. 617.

[2] May we not, in turn, fairly apply here the very statement of St. Alphonsus quoted by Merkelbach that extrinsic authority provides a presumption of intrinsically valid arguments—'auctoritas enim extrinseca non aliud operatur quam afferre vis intrinsecae praesumptionem.'?—*Th. Mor.,* l. i, η. 80.

time without adverting to their grave malice. Tn other words the idea of mortal sin does not yet occur to them. Up to the point at which it does occur to them are they guilty subjectively of mortal sin ?

Sacerdos.

Moral theologians are unanimous in stating that for mortal sin full advertence to the gravity of the act is required.[1] This is only natural when we consider what a terrible evil mortal sin is, and with what tremendous consequences it is fraught. By full advertence is meant that the mind, unimpeded by any serious obstacle, functions normally in considering or attending to the act and to its morality. The advertence need not be vivid, very distinct or protracted. But the agent must advert directly to the fact that he is about to do, or is doing, an act which is or may be gravely sinful. The advertence must be actual, except in the case in which the actual inadvertence is itself voluntary in cause. We might put it thus : in order that an act be a mortal sin from the standpoint of advertence, the agent must advert, at the time of doing the act, to the fact that it is gravely sinful. Or, alternatively, in the absence of such actual advertence, the act must be the effect of a cause freely placed in the past by the agent who foresaw that this gravely sinful effect would follow later. Some few theologians maintain that virtual advertence always suffices for grave sin[2]—and a minor controversy was waged on the question.[3] In practice, however, the teaching outlined above is accepted by all.

In the light of that teaching it can be said, in reply to our correspondent's query, that, in the circumstances as given, in neither case is there full advertence to the grave malice of the immodest actions and, therefore, the parties are not guilty of mortal sin. In the first case it is suggested that the parties never were aware that the acts in question were gravely sinful. Obviously, then, there could not have been any advertence, not to mention full advertence, to their gravity. Advertence is based upon knowledge ; is, in fact, actual knowledge. In the further supposition made in the query the parties normally know, or have habitual knowledge of the gravity of the immodest acts, but, there and then in the act of committing them, they do not advert to their malice. There is no suggestion, in the circumstances given, that this failure to advert—this actual

[1] Cf. Acrlnys-Damen, *Th. Mor.,* i, n. 236 ; Prümmer, *Th. Mor.,* i, n. 37 and n. 365.
[2] E.g. Billuart, *De pea. diss.,* 5, a. 6.
[3] Cf. St. Alph., *Th. Mor.,* l. 5, n. 4.

inadvertence—is voluntary in cause. The parties meet unintentionally. It is implied that, when they actually advert to the grave malice of what they are doing, they desist. Needless to say, if they persisted in doing the acts subsequent to this actual advertence there could be no doubt whatsoever that they were guilty of grave sin. In this event there would be no problem. It may be well to add, however, that, in the supposition that the parties are habitually or normally aware of the gravity of the immodest acts, if they advert at all to the malice of what they are doing, the presumption will be that they advert to the *grave* malice. This, of course, is only a presumption—but it is a very natural one.

We have only considered the circumstances of the case as presented by 'Sacerdos.' We are not called upon to express an opinion on the question as to how far, or how frequently, these circumstances, especially those of the second supposition, may be verified in actual fact. Our contention is simply that if the circumstances as given are verified, there is not sufficient advertence for mortal sin.

RESISTANCE TO TEMPTATIONS

Is consent of the will present when the mind, adverting to an object *sub gravi* prohibited, and at the same time to the obligation of expelling such a thought, nevertheless voluntarily and positively permits such a thought to remain without any just cause?

In Noldin, *De Principiis,* n. 329, p. 2, we have the statement: "Mere passive se habere ubi motus concupiscentiae leves sunt veniale peccatum non excedit etsi versentur circa obiectum sub gravi prohibitum." This principle is repeated in Noldin, *De Sexto Praecepto,* n. 61, p. b. Does the principle not contradict the statement in Noldin, *De Principiis,* n. 324, p. d., which reads: "Quodsi se non avertit iam incipit voluntaria adhaesio ad rem malam"? How can it ever be a light sin when the object constitutes grave matter?

Perplexus.

A simple yes or no will not suffice as an answer to our correspondent's question in the first paragraph of his letter. It is fairly clear from the subsequent questions that what our correspondent really wishes to know is whether, in the case mentioned, there is grave sin. Voluntarily and positively to

permit,[1] without a just cause, a thought which has a gravely sinful object to remain in one's mind, when one is aware of an obligation to expel it, is certainly sinful. Is it gravely sinful? The matter of the thought is, *ex hypothesi,* prohibited *sub gravi.* If the negative or passive attitude involves proximate danger of consent to the object of the thought then (unless, of course there is a sufficiently grave excusing cause for this attitude), there is grave sin. If the danger of consent is only remote there is venial sin. If there is a sufficiently grave cause for passivity there is no sin at all. Is there consent of the will? If there is sin there must be some consent of the will. But consent of the will to what? To remain passive in regard to a sinful thought, if there is an obligation to reject it positively, involves some kind of implicit consent to the object of the thought. But psychologically it is not correct to say that voluntarily to permit a sinful thought (which should be rejected) to remain is to consent formally to the object of the thought. Formal consent is not a negative attitude. It is something positive. Nevertheless the negative attitude approximates to formal consent to the object of the thought, if there is, as a result of this attitude, proximate danger of such consent. In other words, there is, in the case submitted, consent of will to a situation which involves danger of grave sin. This consent, unless there is an excusing cause, is sinful, and gravely sinful if the danger is proximate.[2]

Our correspondent passes on to mention the general principles which concern the obligation to resist temptations—especially when they take the form of inordinate movements of concupiscence. To one assailed by those movements or temptations various attitudes of resistance are possible. The movements may be positively and directly resisted by eliciting contrary acts. Or they may be resisted positively but indirectly by turning aside (mentally and physically) from them. Or, finally, a negative or passive attitude may be adopted in their regard.[3] Temptations and movements of concupiscence are not sinful in themselves. Sin arises when formal consent is given to them or when there is voluntary acquiescence, without a just cause, in

[1] In the course of our reply, in view of the latter portions of the query, we interpret the phrase, 'voluntarily and positively permits,' as equivalent to the phrase 'remains passive.' If, however, our correspondent wishes to convey by the words 'positively permits' that some positive steps are taken to retain the sinful thought which has a grave object—then there is consent to the thought itself and grave sin.

[2] Cf. Merkelbach, *Summa Th. Moralis,* i, 449; Bucceroni, *Institutiones Th. Moralis,* i, 295.

[3] Noldin, *De Principiis,* n. 329; Prümmer, *Th. Moralis,* i, n. 387.

a situation in their regard, which is a dangerous occasion of sin.[1] It is a principle of moral theology that it is sinful to place oneself voluntarily in, or to leave oneself voluntarily in, an occasion which involves proximate danger of sin (unless we have a justifying cause), and that such action is gravely sinful if there is a proximate danger of grave sin. The movements of concupiscence, if strong or vehement, very easily lead to consent in the pleasure to which they give rise. If this pleasure is venereal it is always grave matter for the unmarried. Those vehement movements, therefore, constitute a proximate danger of grave sin and must, apart from an excusing cause, be positively resisted.[2] To omit the resistance is gravely sinful. The general principle is thus stated by Noldin :[3]

Resistentiam omittere, et mere passive se habere ubi motus concupiscentiae magni sunt et vehementes grave peccatum est.

A just cause for omitting positive resistance would be present, theologians[4] say, if those movements arose from some necessary or useful action, or if a passive attitude were the better method of avoiding consent, or if the temptation lasts a long time and protracted positive resistance would involve too great a strain.

When the movements of concupiscence are not vehement they do not constitute a proximate danger to sinful consent, and consequently there is only a light obligation to resist them positively.[6] In other words, to remain passive is only a venial sin—and this is true even though the object of those movements is venereal pleasure which, we repeat, is always grave matter for the unmarried. We need hardly add that if there is a just cause the omission of positive resistance would not be even venially sinful. This is the teaching of Noldin, *De Principiis,* n. 329, p. 2, quoted by ' Perplexus.*[*] The principle is repeated by the same author in *De Sexto Praecepto,* n. 61, where he is discussing impure thoughts. ' Perplexus ' cannot reconcile the teaching in the two passages mentioned with the author's statement in *De Principiis,* n. 324. In this last section Noldin is dealing with the manner in which sin usually originates. The sinful object is presented by the senses or by some other faculty ; the appetite inclines towards it and feels pleasure in this inclination ; the intellect adverts to its sinfulness and to the fact

[1] Cf. St. Th., 1, 2, q. 74, a. 4.
[a] Indirect positive resistance is sufficient.
[§] Loc. cit.
[*] E.g. St. Alphonsus, Bucceroni, Genicot, Noldin, Davis, Merkelbach, among many others.
[§] Merkelbach, *De Castitate et Luxuria,* p. 36.

that the will is forbidden to take pleasure in it and must resist it. Then the will decides. It either accepts or turns away from the sinful object. Here follows the sentence quoted by 'Perplexus' :

Quodsi (voluntas) non sc avertit, iam incipit voluntaria adhaesio ad rem malam.

There are a few points to be noted in reference to this passage in view of the difficulties expressed in the query. Noldin is speaking of the genesis of sin in general, including, therefore, both mortal and venial sin. He has made it abundantly clear that *non aversio voluntatis* in the sense of *passive se habere* may be only a venial sin even when the matter in question is grave.[1] It is at the same time clear that such passivity (apart from the case where an excusing cause is present—a case that is not being considered at this point) is always sinful.[2] And this fact justifies the words :

Quodsi non se avertit, iam incipit voluntaria adhaesio ad rem malam.

It should be noted, too, that Noldin says :

iam incipit voluntaria adhaesio *(not* voluntarius consensus) ad rem malam propter non reiectam tentationem,

and he continues

quae adhaesio per positivum consensum consummatur.

The reply to our correspondent's final question is contained in what we have written already. In brief, it is that the obligation of positively resisting temptation and movements of concupiscence is measured not by the object, which we suppose here is grave, but by the degree of danger of this grave sin which they involve.[3] If they involve proximate danger of grave sin there is a grave obligation. If the danger of grave sin is only remote then there is only a light obligation to offer positive resistance. In other words, passivity in this latter case is a venial sin. The object is, indeed, grave, but there is not formal consent to this object or acquiescence in a proximate danger of such consent.

1 Cf. op. cit., n. 318.

2 'Non licet erga hos motus passive se habere—nisi adsit iusta causa,' op. cit., n. 329

3 Merkelbach, speaking of those movements of concupiscence in regard to which one remains passive, says : 'Homo in illis certo peccat - - - at per se non peccat graviter, quia deest positivus et plenus consensus voluntatis, per accidens peccaret graviter, si inde haberetur proximum periculum consentiendi motibus graviter prohibitis ut saepe fit in commotionibus venereis vehementioribus.' *Th. Moralis,* 1, n. 449.

SECTION II

FIRST AND SECOND COMMANDMENTS

A SUPERSTITIOUS FORM OF DEVOTION

A short time ago, I met some devout pilgrims who were practising a strange form of devotion—a novena which consisted in swallowing, on each of the nine days, a small picture of Our Lady of Perpetual Succour. Wonderful effects were attributed to the practice of this devotion. Would you please comment?

Peregrinus.

The querist has supplied us with some samples of the pictures which were being used in the 'novena.' They are roughly about a square inch in size and are printed, without any prayers attached, on sheets of very fine paper. Our first comment on these pictures must be that they do not bear any 'Imprimatur' and hence have been issued in violation of ecclesiastical law. The pictures should have been submitted to ecclesiastical censorship, and if permission to publish them had been given, this should have been noted on the pictures.

Nisi censura ecclesiastica praecesserit, ne edantur etiam a laicis . . . imagines sacrae quovis modo imprimendae, sive preces adiunctas habeant, sive sine illis edantur.[1]

And later:[2]

Licentia, qua Ordinarius potestatem edendi facit in scriptis concedatur, in principio aut in fine libri, folii vel imaginis imprimenda, expresso nomine concedentis itemque loco et tempore concessionis.

Moreover, it seems to us that the 'novena' described in the query must simply be classed as a superstitious practice—and this on two counts. Firstly, very wonderful results are attributed to and, doubtless therefore, are expected from the practice of this devotion for nine days. Secondly, there is question here of the use of sacred images in a manner which is alien to ecclesiastical tradition and has not the approval of the Church.[3] The practice may be descibed as 'cultus indebitus (superfluus) veri Numinis.'[4] St. Thomas wrote:[5]

[1] Canon 1385, § 1, 3°.
[2] Canon 1394, § 1.
[3] Cf. Canons 1261, 1279, §2.
[4] Cf. Noldin, *De Praeceptis,* n. 150.
[5] S. *Theol.,* 2-2, q. 93, a. 2.

Si aliquid sit, quod, quantum est de sc, non pertinet ad Dei gloriam, neque ad hoc quod mens hominis feratur in Deum, aut quod carnis concupiscentiae moderate refrenentur ; aut etiam si sit praeter Dei et Ecclesiae institutionem, vel contra consuetudinem communem . . . totum hoc reputandum est superfluum et superstitiosum, quia in exterioribus solum consistens, ad interiorem Dei cultum non pertinet.

Paper is a non-nutritive substance and, accordingly, the eating or swallowing of the sacred images is not naturally capable of producing any ameliorative physical effect. Indeed, deliberate eating of these printed images seems a somewhat unnatural and ridiculous proceeding. And, as might be expected in these circumstances, the practice has not been established by divine institution, or by the institution or custom of the Church. In the sacramental signs appointed by Christ, and in the sacramentals recognized by the Church, there is an appropriateness of signification which is entirely lacking in the practice of eating printed images. Thus, this practice is one which is liable to create in the minds of many, especially of the less well instructed, a false notion of the nature of religious worship and it could be taken, by the enemies of the Church, as an occasion for the disparagement and ridicule of Catholic devotions.

The 'novena' referred to by 'Peregrinus' seems to fall directly into the category of devotions censured by the Holy Office in a decree issued some years ago.[1] In this decree the Sacred Congregation recalled the teaching of the Council of Trent, the frequent declarations of the Roman Pontiffs and the prescriptions of the Code of Canon Law in regard to the necessity and obligation of eradicating any abuses in the worship of the saints and in the use of their images. It was then pointed out that, despite these frequent and grave warnings, 'new forms of worship and devotion, often enough ridiculous, usually useless imitations or corruptions of similar ones which are already legitimately established, are in many places, especially in these recent days, being daily multiplied and propagated among the faithful, giving occasion for great astonishment and for bitter aspersion on the part of non-Catholics.'[2] The Sacred Congregation called for renewed zeal in the eradication of these abuses and in the prevention of the introduction of others.

[1] *A.A.S.*, xxix (1937), 304.
[2] Bouscaren, *Canon Law Digest,* u, at., p. 373.

A SUPERSTITIOUS FORM OF DEVOTION

In replying to a question by 'Peregrinus' about the practice of swallowing small pictures of Our Lady of Perpetual Succour you stated: 'Deliberate eating of these printed images seems a somewhat unnatural and ridiculous proceeding. And, as might be expected in these circumstances, the practice has not been established by divine institution or by the institution or custom of the Church. . . . There is question here of the use of sacred images in a manner which is alien to ecclesiastical tradition and has not the approval of the Church.'

Actually, however, the practice of swallowing paper pictures of Our Lady is expressly allowed, with due safeguards, in a reply of the Holy Office, 3rd August, 1903: 'num pro licito habendum esset parvas imagines chartaceas B.V.M. in aqua liquefactas vel ad modum pillulae involutas, ad sanitatem impetrandam, deglutire? Re ad examen vocata. . . . Sacra haec Suprema Congregatio S. Officii . . . respondendum decrevit: Dummodo vana omnis observantia, et periculum in ipsam incidendi removeatur, licere.' Quoting this reply in the *Clergy Review,* October, 1950, pp. 267-8, Canon E. J. Mahoney noted that 'the Church is accustomed to permit a wide limit to the pious faithful in following their bent.' In view of such evidence is it possible to describe the practice in question as 'a superstitious form of devotion' without due limitation or to state: 'The "novena" referred to by "Peregrinus" seems to fall *directly* into the category of devotions censured by the Holy Office in a decree issued some years ago (i.e. the 1937 decree against abuses in the veneration of the saints and the use of their images)'?

Sacerdos.

In our earlier reply we commented on a form of devotion which consists in swallowing, on each of nine successive days, a small picture of Our Lady of Perpetual Succour. From this devotion wonderful effects were expected. We gave it as our opinion that the 'novena' devotion thus described must be classed as a superstitious practice. That is our opinion still. The pictures used in the devotion—we had samples of them—were issued in violation of ecclesiastical law; they did not carry the necessary 'Imprimatur.' Wonderful effects were attributed to the mere swallowing of the printed images which, being of paper, were non-nutritious. There was no evidence that the devotees had to say any prayers or to perform any recognizable act of religious worship. We claimed that this 'novena' devotion was liable to create in the minds of the faithful, especially of the less well instructed faithful, a false notion of the nature of religious worship; that the devotion could, and would, be taken by the enemies of the Church as an occasion for the ridicule and disparagement of Catholic devotional practices.

Consequently, it seemed to us that the 'novena' devotion fell directly under the censure of the Holy Office decree which forbade forms of worship which gave 'occasion for great astonishment and for bitter aspersion on the part of non-Catholics.'[1] And we may add, at this point, that there are very many indications, in its modern legislation[2] and in its recent decrees,[3] that the Church sets very definite, and not always wide, limits to the devotional bent of even the pious faithful.

We are now confronted with a reply of the Holy Office issued in 1903[4] in which the practice of swallowing paper images of the Blessed Virgin is given a restricted or qualified '*licere*'.[5] We should point out here that, in our previous reply, we were not concerned with the isolated question of the liceity of swallowing paper images of Our Lady. We had been asked to comment on a nine-day devotional practice to which wonderful effects were attributed. Does our correspondent think that the reply of the Holy Office, which he quotes, gives approval to, or would allow this particular practice? Does he suggest that the Holy Office would sanction the issue or the use of printed sacred images which do not carry an 'Imprimatur'?

The Holy Office was asked whether the swallowing of small paper images, as a petition for health, could be regarded as lawful. And the reply was that, provided all vain observance and the danger of falling into vain observance be removed, the practice is lawful. This reply, as we have remarked earlier, is a restricted admission of liceity. We must consider the meaning of the restriction. Consequently we must ask: what is vain observance? What are the signs or criteria whereby its presence can be diagnosed? And is all vain observance, and the danger thereof, absent in the devotional practice under consideration here? Vain observance is a species of superstition and can be defined as:

> ratio consequendi effectum . . . medio aliquo improportionato, quod neque a Deo, neque a natura vim habet intentum effectum operandi.[6]

In the question submitted to the Holy Office there is reference to the swallowing of paper images to impetrate health. Hence

[1] Decree of Holy Office, 26th May, 1937, *A.A.S.,* xxix (1937), p. 304.
[2] Cf. Canons 1259, 1261, 1279.
[3] Cf. Decrees of Holy Office, *A.A.S.,* xxvi (1934), p. 233, *A.A.S.,* xxx (1938), p. 226, A.A.S., xxxii (1939), p. 24, *A.A.S.,* xxxiv (1942), p. 149.
[4] M.S.S., xxxvii, p. 237.
[5] The Holy Office did not establish the practice. Nor, strictly, did it give approval. Permission is not precisely the same as approval.
[6] Cf. Acrtnys-Damen, *Th. Mor.,* i, n. 423.

the kind of vain observance which is relevant to our discussion is what is technically known as

observantia sanitatum—quae est ratio curandi morbos adhibitis mediis prorsus ineptis– inhalationibus, orationibus, rebus sacris.*

What are the criteria for diagnosing the presence of vain observance ?

Sunt potissimum haec tria (α) insufficientia causae ad effectum producendum, quippe quae neque ex se neque ex Deo talem virtutem habet ; (A) adiectio vanae vel falsae circumstantiae tamquam necessario requisitae ad effectum obtinendum, etsi signa vel media ex se bona et sancta sint ; (c) infallibilis exspectatio effectus propter solam horum signorum applicationem veluti ex opere operato.'

If any one of these criteria or signs is certainly present, the procedure must be regarded as superstitious. Prümmer, commenting on the first criterion, writes :[3]

Hinc manifesta superstitio est, si quis recitando brevem formulam putat se inde sanitatem esse recuperaturum.

An examination of the 'novena' devotion under discussion, and as described above, reveals that not merely one but all three of the signs of *vana observantia* are verified. The means used are completely incapable of producing the expected effects ; there is emphasis on the use of the means on each of nine successive days, and wonderful effects are expected from the mere swallowing of the printed images.

There remains the objection that the Holy Office admitted that the swallowing of small paper images of the Blessed Virgin could be lawful, whereas we stated in our earlier reply that deliberate eating of such images seemed ' a somewhat unnatural and ridiculous proceeding.' It must be noted that this statement was made within the context of the whole query, from which it should not have been divorced. But even abstracting from that context, the eating of printed images, materially considered, does seem to be somewhat unnatural and ridiculous, in the sense that what is consumed serves no natural or nutritious purpose. The natural purpose of receiving objects into the mouth and of swallowing them is to provide for or contribute to the nourishment and material well-being of the body.[4] Does the eating

* Ibid., et Prümmer, *Th. Alor.,* ii, η. 515 ; NoIdin, *De Praeceptis,* η. 160.
' Noldin, op. cit., n. 161.
3 Op. cit., n. 517.
4 We prescind here from the question of the Blessed Eucharist. No one who understands the Doctrine of the Blessed Eucharist would for a moment admit any true analogy between receiving Holy Communion and swallowing images of Our Lord, the Blessed Virgin or the saints. Yet we feel that there is a possibility that some such analogy might be made by or might occur to the less instructed. This is another reason for extreme care in allowing devotions like the swallowing of images.

of paper images achieve this purpose ? Can it ? And if it does not and cannot, may it not, in itself, be described as somewhat unnatural ? And if a person were to indulge in the practice of swallowing paper images for the purpose of nourishment or of securing health therefrom, would not his action be open to ridicule by sensible men ? Would it not fairly be described as somewhat ridiculous ? The Holy Office admitted the liceity, under certain conditions, of swallowing paper images of the Blessed Virgin, not as a means of procuring health thereby, but as a form of impétration for the intercession of Our Lady to obtain health. In other words the Holy Office did not admit the liceity of swallowing the images to obtain health. The wording of the question submitted, the phrase *ad sanitatem impetrandam,* and the qualification of the reply make this interpretation clear. If the swallowing of the paper images is resorted to as being capable, of itself, of producing the effect of health, there is *vana observantia*—by reason of the ineptitude of the means. And if people are liable to be led to think that the mere swallowing of paper images can of itself bring health, there is the danger of *vana observantia.* There would also be *vana observantia,* or the danger thereof, if any circumstances like numbers or gestures were emphasized, or if an effect is expected with infallible efficacy, as if the swallowing of printed images were considered to have something like *ex opere operato* efficacy.

CHAIN PRAYERS

I have come also across some of the ' chain prayers ' passed around from individual to individual. I am on the look-out at present for a pious manual which is in circulation. It deals with the rosary and gives all kinds of sentimental and self-effacing ideals.

Would you kindly give the theological viewpoint on all these practices. I suspect that they border on superstition.

Parochus.

In accordance with our correspondent's request it may be well at this point to elaborate a little the theological teaching on superstition. It can be defined as ' cultus religiosus vitiosus veri vel falsi numinis.' Superstition can take many forms. The definition given suggests immediately a twofold division : false worship of the true God and divine worship of false gods.[1]

[1] Following St. Thomas, 2, 2, q. 93, a. 1, superstition is often defined as ' Vitium exhibens cultum divinum vel cui non debet vel eo modo quo non debet.'

And the former may be sub-divided according as the cult given to the true God is, on the one hand, by means of religious practices that are false or condemned[1] or, on the other, by superfluous acts of worship. This last category does not suggest that God can be worshipped too much but rather that He can be worshipped in the wrong way—'modo indebito'—even when the acts of worship are not in themselves false or formally condemned by the Church. True devotion must always imply a willingness to submit to God's Will and to the laws of His Church.

The faithful are forbidden to introduce new practices or methods of devotion without due ecclesiastical approval. It is not an objectively valid justification to plead that these novelties are the pious issue of a simple faith. Thus the use of novel unapproved forms of worship is a species—though not indeed, *per se,* the most reprehensible species[2]—of superstition. If infallible or preternatural effects are expected from these new forms of worship we have a more serious kind of superstition—one which approximates to the sin of *vana observantia.*[3] It should be added that there is in the practice of unauthorized devotions, and in undue emphasis on numbers or methods, the grave danger of causing scandal to the weaker brethren and of opening the way for derisive attacks by non-Catholics—a danger of which a 1937 decree of the Holy Office takes due cognisance. Prilmmer writes :[4]

> Eiusmodi cultus superfluus est, e. gr. velle orare cum certo numero, situ, colore candelarum, velle audire Missam alicuius sacerdotis, qui vocatur Petrus et alii sexcenti modi vani cultus. Superstitio cultus superflui est ex genere suo peccatum veniale, quia materia est levis et actio in se non est mala. Bona fides et simplicitas agentis aliquando ab omni prorsus peccato excusant ; ccontra propter scandalum aut Ecclesiae contemptum aut malam intentionem agentis haec superstitio potest evadere peccatum mortale. Ab omni autem labe superstitionis immunes sunt modi colendi Deum ab Ecclesia probati, ut e. gr. devotiones novendiales, triduanae, Missae Gregorianae, etc.

What we have written has clear application to chain prayers. As we understand it, one of the vital elements demanded in this

[1] For example the use of the ceremonies of the old dispensation—or the invention of miracles to excite devotion.

[2] Cf. St. Alph., *Th. Mor.,* l. 3, n. 3. Mcrkelbach, *Th. Mor.,* ii, n. 773, writes : 'Cultus superfluus . . . est peccatum ex genere suo veniale.'

[3] Cf. St. Alph., op. cit., n. 17, and Schmalzgrueber, *Jus Eccles. Universum,* vol. x, p. 823, writes : 'Pro regula tradunt Doctores Catholici quidquid praeter ecclesiae consuetudinem adhibetur ad operationem aliquam secuturam, si talem operationem efficiendi vim non habet, ad magiam superstitiosam pertinet.'

[4] *Th. Mor.,* ii, n. 501.

form of prayer is that the chain be kept intact and, indeed, extended by the recipients of the prayer formula. Each recipient must form new links by sending copies of this prayer to a certain number of others. If this be done, the request sought through the prayer will infallibly be granted. And it is even suggested that a recipient who fails to extend the chain will somehow be punished. We have no hesitation in describing as superstitious this form of prayer, this attribution of infallible efficacy to the extension of the chain as well as the suggestion of a sanction for failure to extend it. Our description remains true even when there is question of distributing, in chain fashion, an approved prayer formula. And we understand that the prayers thus distributed frequently have not any ecclesiastical approbation.

In all this matter of devotional practices the Church has been consistently conservative. Ecclesiastical authority has always been anxious to eradicate any vestiges of superstition from existing devotions and to prevent the introduction of new devotions which are in any sense foreign to received tradition, or which might savour of, or lead to, error, profanity or superstition. The Council of Trent,[1] having declared the liceity and value of the cult of the saints and their relics and images, immediately added a solemn warning to the bishops—that they were to exercise vigilance in eliminating any abuses in this cult and, in particular, that they should suppress all superstition. On many subsequent occasions that general warning of Trent has been repeated and, in accordance with its tenor, several particular forms of devotion have been singled out for condemnation by the Holy See.[2] In 1875 the Holy Office condemned devotion to the Holy and Pure Blood of Our Lady and added[3] that 'writers who exercise their talents upon subjects savouring of novelty and who, under the guise of piety, try to promote unaccustomed forms of devotion . . . are to be warned to cease from these activities.' The same provisions are restated in the Code of Canon Law—particularly in canons 1259, 1261 and 1279. For instance, in canon 1261, § 1 we read

> Locorum Ordinarii advigilent ut sacrorum canonum praescripta de divino cultu sedulo observentur, et praesertim ne in cultum divinum sive publicum sive privatum aut in quotidianam fidelium vitam superstitiosa ulla praxis inducatur, aut quidquam admittatur a fide alienum vel ab ecclesiastica traditione absonum vel turpis quaestus speciem praeseferens.

[2] oess. xxv.

[1] Cf. *I. E. Record,* May, 1940, pp. 542-4.

[3] viii, p. 269.

In the year 1937 the Holy Office, in an important decree,[1] referred to these previous warnings and deplored the fact that they had not been fully observed. New forms of devotion which arc often ridiculous or useless imitations and corruptions of legitimately established devotions 'are in many places, especially in these recent days, being daily multiplied and propagated among the faithful, giving occasion to great astonishment and to bitter aspersion on the part of non-Catholics. Again and again, therefore, this Sacred Congregation of the Holy Office—by express mandate of His Holiness, Pope Pius XI —earnestly appeals to the zeal and pastoral solicitude of the bishops who have the care of souls throughout the Catholic world, and charges them in conscience to urge at last the strictest observance of the aforesaid admonitions and injunctions, by firmly abolishing abuses which have already arisen and taking the most diligent precautions lest any new ones come into vogue.' Since that decree was issued the Holy Office has forbidden the introduction of a special devotion to the Sacred Head of Our Lord[2] and has refused to allow the encouragement among the faithful of the devotion to the annihilated love of Jesus and the rosary of the Most Sacred Wounds of Our Lord.[3]

Our correspondent mentions a pious manual which apparently contains sentimental and exaggerated mystical ideas. It is scarcely necessary to recall here the danger of sentimental and exaggerated mysticism. Some such form of false mysticism has been at the back of almost every heresy the Church has known. The reference to self-effacement[4] reminds us particularly of the Quietists and Semi-quietists whose mystic idealism would exclude as mercenary and debasing even acts of the theological virtue of hope.[5] One of the propositions condemned by Pope Innocent XII reads :[6]

> Datur habitualis status amoris Dei qui est caritas pura et sine ulla admixtione proprii intéressé. Neque timor poenarum, neque desiderium renumerationum habent amplius in eo partem. Non amatur amplius Deus propter meritum, neque propter perfectionem, neque propter felicitatem in eo amando inveniendam.

There is one other point which it may be useful to note in this

[1] *A.A.S.*, xxix, p. 304.
[2] *A.A.S.*, xxx, p. 226.
[3] *A.A.S.*, xxxii, p. 24.
[4] The Council of Trent (Sess. vi, c. 31) defined the lawfulness of hope and later a proposition of Baius was condemned because it disparaged all self-interest. Cf. Denz., n. 1038.
[5] Cf. Pierse, *Virtues and Vices*, pp. 212-14.
[6] The proposition was one of twenty-three Semi-quietist propositions advanced by Fenelon—who afterwards retracted them. Denz., n. 1327.

context : It is fallacious to suggest that the ordinary faithful should attempt slavishly to imitate the extraordinary external actions attributed to some of the saints.[1] The path of sanctity for the vast majority must lie along the little way of endeavouring to do the ordinary tasks of life extraordinarily well.

FURTHER NOTE ON CHAIN PRAYERS

In a previous reply we described chain prayers as superstitious forms of devotion. We mentioned the exaggerated promises and efficacy attributed to such prayers and that it is often hinted that failure to co-operate in extending the chain may be punished. A friend who read our remarks has given us a copy of a chain prayer (with its introductory note) which, he tells us, is very much in vogue in some parts of the country. The introductory note illustrates the points we made in our previous reply. Some of our readers may find the note interesting. It runs : ' The following Prayer was found in the grave of Our Lord Jesus Christ in the year 1803, and was sent from the Pope to Emperor Charles, as he was going to battle, for safety. They who shall repeat it every day or keep it about them, shall never die a sudden death, nor be drowned in water, nor shall they fall into the hands of their enemies in battle, and it being read over any woman in labour, she will be delivered safe, and be a glad mother and when the child is born let this prayer be read over it and he or she shall not be troubled with any misfortunes, and if you see any one in fits, read it over him or her and he or she shall stand up and bless God, and they who shall repeat it in any house shall be blessed by the Lord and he that will laugh at it will suffer. Believe this is certain and true as the holy Evangelist had written it. They who keep it about them shall not hear thunder or lightning and they who shall repeat it every day shall have three days' warning before their death.'

The attached prayers are addressed principally to Our Lord as suffering and crucified. Though there is nothing really objectionable in their content, they arc peculiarly composed and there are many exotic expressions. Needless to say, there is no ' imprimatur.'

[1] Such slavish imitation might well be tantamount to the sin of *lenlatio Dei.*

IS THE GIVING OF 'LUCK-MONEY' SUPERSTITIOUS ?

Can the practice of giving 'luck' which is widespread in Ireland be defended theologically ? There are some who hold that 'luck' is only given by way of discount. Others say that it is a sign of good will. In some cases the seller has no option. The 'luck' is deducted by the buyer. Would you say that, for some at least, the 'luck-penny' is a superstitious practice ?

Kassis.

In our opinion there is nothing superstitious or theologically indefensible in the practice of giving 'luck-money' on the occasion of certain sales. The practice is very widespread in this country, especially in the case of the sale of livestock. As our correspondent notes, oftentimes the 'luck-money' is stipulated for in the arrangement of the sale, and thus it is in such cases really used as a means of reaching an agreed price. There is often an interesting psychological situation here. Frequently enough sellers will be unwilling to accept a price, say of £50—when the 'luck-money' will be merely nominal—but they will gladly accept a price of £51 and agree to give £1 for luck. But even when the 'luck-money' does not enter into the contract in the manner mentioned it is given—and custom seems to demand it in many cases—as a gesture and token of good will on the part of the seller. Here, too, as we see it, the custom is not merely not reprehensible but is laudable, and we would regret its passing. It seems to lend to the usual hard and material processes of buying and selling a human and benevolent touch. Some people may, perhaps, regard this custom in a superstitious light ; but they are, we believe, very few. And the superstitious approach of a few cannot be construed as any serious argument against a well-established and generally non-superstitious custom. Indeed, there must be a very small number of human practices regarding which at least a mildly superstitious outlook will not be found in the minds of some people.

ARTICLE ON TRUE CHRISTIANITY

For a fuller discussion of some points raised in the preceding queries, we refer inquirers to an article entitled : 'True Christianity, Signs and Wonders,' which appeared in

L'Osservatore Romano.] The author was Cardinal Ottaviani, Secretary of the Holy Office, and a recognized authority on theology and public canon law. The article deals with the dangers of blind religiosity which manifests itself so frequently to-day in the credulity and in the easy and enthusiastic acceptance by the faithful of alleged extraordinary religious manifestations, visions and so-called miracles. The dangers of this uncritical attitude are indicated. Credulity is as harmful to the Christian religion as is incredulity. While no Catholic would question the possibility of miracles or the reality of those which have been duly attested and authenticated, the Church is the enemy of the *false* miracle—and, we might add, the false miracle is the enemy of the Church. It is pointed out repeatedly that alleged manifestations and miracles must be rigidly subjected to the judgment of the ecclesiastical authorities.

In the course of the article, there are two points to which, in view of some recent queries submitted to us, we feel we should draw particular attention. The first concerns the nature of true religion and sanctity. Monsignor Ottaviani writes : 'To think oneself religious, however that may come about, is not required. What is required is to *be* truly religious. As in the case of other feelings, there can be, and in point of fact there are, also deviations from true religious feeling. Religious sentiment must be guided by reason, nourished by grace and, as is our whole life, controlled by the Church.' And again : 'A good Catholic knows that in the saints themselves the nature of sanctity does not consist in preternatural gifts of visions, prophecies and wonders but in the heroic exercise of virtue. That God should in some way authenticate holiness by miracles is one thing ; but that holiness consists in performing miracles is another.' The second point, a kindred one, refers to the sufficiency of revelation : 'A good Catholic knows from his catechism that the true religion rests on the true Faith, on Revelation which ended with the death of the last Apostle and has been entrusted to the Church, its interpreter and custodian. Nothing else necessary to our salvation can be revealed to us. There is nothing more for which we must look. We have everything, if we wish to make use of it. Even the most accredited visions can furnish us with new motives for fervour but not with new elements of life and doctrine.'[1]

[1] 4 February, 1951 ; translation in the *I. E. Record* of April, 1951.

PROSELYTIZING LITERATURE

We have been sent a number of booklets and leaflets which, apparently, are being distributed or hawked widely through the country. Our correspondent asks for comments on this literature and, in particular, on one booklet which purports to be an approved edition of the Gospel of St. John. We shall deal separately with this latter point.

It is clear that some proselytizing groups are responsible for the issue and distribution of this literature. We do not think that it all has come from one and the same source. But it all runs perfectly true to type. Some of the booklets are full of scriptural references; others contain the vapid vapourings of the 'saved'; a few are blatantly Protestant. In one, 'The Gospel in a Nutshell,' St. John iii, 16, is described as [8] *Martin Luther's Sword,* indicating that by the sword of God's love Luther overcame the forces of darkness; grace shook the monk, and the monk shook the world.' These booklets and leaflets are written by non-Catholics. They deal professedly with religious matters and, in the main, they are calculated and intended to inculcate erroneous doctrines. So they come under a class of literature which is specifically prohibited.

Ipso iurc prohibentur libri quorumvis acatholicorum qui ex professo de religione tractant nisi constet nihil in eis contra fidem catholicam ĉontineri.

This prohibition of law implies that these works should not be edited, read, retained, sold, translated or transferred to others without due permission.[2] In a word, then, they should be destroyed. Catholics should be careful not to co-operate in any way in this proselytizing campaign. Some of the booklets are distributed gratis, for others there is a small charge.

We have been asked particularly about the booklet which contains St. John's Gospel and is marked 'Douay Version.' A feature of this booklet is the use of signs to point to what are considered the more important texts. There are no notes, and this defect puts the booklet out of court for Catholics.

Versiones sacrarum Scripturarum in linguam vernaculam typis imprimi nequeunt, nisi sint a Sede Apostolica probatae, aut nisi edantur sub vigilantia Episcoporum et cum adnotationibus praecipue excerptis ex sanctis Ecclesiae Patribus atque ex doctis catholicisque scriptoribus.·

Unauthorized versions are prohibited *ipso ſure.* The text of the booklet under consideration is taken from a noteless edition

[8] Canon 1399, 4°.
•Cf. Canon 1398, § 1.
[3] Canon 1391.
[8] Canon 1399, 5°.

of the New Testament which was first published about the year 1820. It was published by a proselytizing society as part of a sustained effort to force the Bible on Catholics, as the one and only rule of faith. The edition was printed by one Richard Coyne and is sometimes referred to as Coyne's Bible. It had an interesting history which has been told by 'A. P. H.' in the *Standard* of 26 January, 1945, under the title of 'Scriptural Confidence Trick.' It was alleged by the publishers that *the* edition had the approval of Archbishop Troy. And thus to make it more acceptable to Catholics, a statement of this approval, together with a Roman Rescript, was embodied in many of the copies published. 'A. P. H.' contends, and gives arguments for his contention, that Dr. Troy never really approved the noteless edition, that his 'so-called approval is a mere statement of the fact that the text of the book is the genuine Douay text' and that, on analysis, the statement of the archbishop emerges as a condemnation, since in it the noteless edition is contrasted with approved editions. Further, 'A. P. H.' thinks that the noteless edition had a short life because it was discredited, in the eyes of Catholics, from the very beginning. Its discarded plates were discovered in a lumber room at the end of the last century. They were acquired by the Hibernian Bible Society which has kept it in print ever since and has provided cheap bibles for the various proselytizing groups.

In the copy of St. John's Gospel which has been sent to us, there is no reference to the 'approval' of Archbishop Troy. It is, however, stated on the title page that it has been 'reprinted from the text of the stereotype edition, as printed by Richard Coyne, 4 Capel Street, Dublin, printer and bookseller to the Royal College of St. Patrick, Maynooth, and publisher to the Roman Catholic Bishops of Ireland.' This reference to Coyne's position as printer and bookseller to Maynooth College and as publisher to the bishops is doubtless intended to create the impression that this edition has some authoritative approval, and that, consequently, it should be acceptable to Catholics. But the facts are that it has no such approval and it is not acceptable to Catholics. On the contrary, as we have noted, it is one of those works which are specifically prohibited by Canon Law.

The distributors of this gospel text are 'philanthropists.' It is stated in a note at the end of the booklet that if any other Gospel is desired (or even the complete New Testament), it will be forwarded on request and free of charge.

THE APOSTOLATE OF THE PRAYER CARD

A distinguished correspondent, who signs himself 'Caritas,' has sent us a copy of a prayer card which, we understand, has been widely distributed among civilians and soldiers in England. The purpose of the prayer card, we are informed in an explanatory circular letter (a copy of which has been sent also by 'Caritas'), is to provide a practical means for all of sharing in a general crusade of prayer for which the leaders of the Churches and of the State have appealed. Our correspondent tells us that an Anglican vicar has been startled by the novelty of Catholic doctrine expressed in the card and in the explanatory letter. We are asked for our comments.

We trust that 'Caritas' will understand that it is not possible to give in full the text of the prayer card and of the letter. It is not necessary to do so. The card contains Acts of Faith in the principal mysteries of the Christian religion and a general Act of Faith in all that God has taught and revealed. It contains also Acts of Hope, Charity and Contrition, and includes aspirations for strong faith and for help to do all that is necessary for salvation. The formulae given are brief but excellently worded and we see nothing in their content to which objection might be taken. We think that both 'Caritas' and the Anglican vicar would agree with us thus far. In the explanatory letter it is stated that the card 'is intended to help all who acknowledge God to pray rightly.' This is a very praiseworthy intention. The letter continues: 'The great majority do not know how to do the only thing that matters at the present time, and in fact at all times—which is to put themselves right with Almighty God. The Acts of Faith, Hope, Love and Contrition on the card are sufficient by themselves, if sincerely made, to place a person, baptized or unbaptized, in a state of grace.' This, we feel is the statement which has startled the Anglican vicar and is mainly responsible for the indignant criticism of our correspondent. There is no reference in the letter or card to the necessity of Baptism—nor, indeed, to the obligation of becoming a member of the Church of Christ. In fact there seems to be an implied suggestion in the letter that Baptism is not necessary. Christ has said: 'Unless a man be born again of water and the Holy Ghost, he cannot enter the kingdom of God.' That expresses a fundamental Christian doctrine. The Council of Trent[1] has defined that Baptism is necessary for salvation.

[1] Scss. 7, Canon 5, *de bapt.* (Dcnz., 861).

The Canon Law says it is necessary in *re vel in volo.*[1] It is necessary by necessity of means. It is perfectly true, of course that Acts of Charity and Contrition—like those given in the card[2]—contain at least an implicit *votum of* Baptism inasmuch as they imply a willingness to do whatever is necessary for salvation.[3] And this suffices for the reception of sanctifying grace when Baptism *in re* cannot be received. There remains, however, the grave obligation of receiving the sacrament on the first available opportunity. Conscious failure to fulfil this duty will involve loss of sanctifying grace.[4]

From what we have written it follows that the statement in the explanatory letter can be understood in a true sense, but it is likely, we think, to create a false impression, both by reason of what it seems to imply and by what it omits to express. We appreciate, and sympathize with, the anxiety of the writer to extend a helping hand to all who believe in God. But there is nothing to be gained by silence in regard to fundamental obligations and there is the danger of scandalizing those who are of the household of the Faith. If a man has reached the state of mind when he can sincerely recite the Acts contained in the prayer card, he is not likely to refuse to accept further duties seen to be essential.

Our correspondent objects also to the design of the prayer card. He has little sympathy with those to whom a cross on it would look too pious. The majority will agree with that attitude. But the omission, at the same time, is hardly a serious objection against the card. We see no reason why a priest may not sponsor and distribute the prayer card. His doing so will not suggest that he regards the prayers thereon as a substitute for Baptism or membership of the Church, or that he subscribes to any suggestion of that nature which seems to be implied in the present form of the explanatory letter. If he is in doubt he should consult his Ordinary.

ASSISTANCE OF CATHOLICS AS WITNESSES IN NON-CATHOLIC MARRIAGES

Father Davis in his *Moral and Pastoral Theology,* i (p. 285) says : ‡ In Protestant marriages in a Protestant church, a Catholic should not, in general, take any part as witness. The custom of the place should be enquired into and lawfully retained.'

[1] Canon 737.
[2] Cf. Prümmer, *Th. Mor.,* iii, n. 114.
[3] Ibid.
[4] Cf. Merkelbach, *Th. Mor.,* in, n. 134.

I should be grateful for your opinion as to whether : (a) A Catholic may act as ' best man ' at a Protestant wedding in Ireland ; (6) If such assistance is sinful, could the Catholic receive sacramental absolution from a confessor whose diocesan faculties are subject to the reservation ' Presence at heretical worship ' ?

Januarius.

It is clearly stated in canon 1258, § 1, that the faithful may not in any way actively assist or take a part in the sacred rites of non-Catholics. It can be asked, then, at the very outset, whether to act as best man at a Protestant wedding, assumedly in a Protestant church, is a form of active assistance at a non-Catholic religious ceremony ? For if it is, then, without more ado, it must be described as unlawful and no one would, for a moment, question that it comes under the reserved case described as ' presence at heretical worship. And, at first sight, the answer to the question posed would seem to be a definite affirmative. But an examination of various official replies and of the statements of authors on this matter gives rise to an element of doubt as to whether a best man or bridesmaid at a Protestant marriage may really be said to assist actively in a non-Catholic religious ceremony.

In the eighteenth and nineteenth centuries the Holy Office and the *Congregatio de Propaganda Fide* issued replies to a number of questions addressed to them from various places. A difficulty in assessing these replies and in formulating any general principle from them arises from the fact that, for the most part, they seem to have particular circumstances in view. In 1770 the Holy Office was asked by the Vicar Apostolic of Smyrna : [1]

An liceat Catholicis baptismis Protestandum et eorum concionibus interesse, necnon matrimoniis et baptismis Graecorum, in quibus, per se vel per alios, aliquando etiam officio patrini funguntur ?

The reply given was :

Catholicis regulariter non licere Haereticorum aut Schismaticorum concionibus, baptismis et matrimoniis interesse. Absolute autem non licere, nec per se nec per alios, fungi officio patrini in baptismis, qui Haereticorum filiis ab Haereticis ministrantur.

It will be noted that the reply does not make any statement about the absolute unlawfulness of a Catholic acting as a ' patrinus ' in heretical marriages—even though this point seems to have been raised in the question submitted. In 1803 the Congregation of Propaganda replied :[2]

[1] *Collectanea Decretorum S. Sedis,* n. 1831.
[2] Ibid., n. 1833.

Negative quoad utramque partem

to the question :

Peut-on permettre aux Catholiques d'être parrains aux baptêmes des Schismatiques, ou d'assister comme, témoins à leur marriages ?

But, in the Collection of Decrees, there is added in the reply a reference to an Instruction of the Holy Office issued in 1859. In this Instruction we read :[1]

Nam quae circa patrinos in matrimoniis . . . nullam declarant cooperationem prohibitam quoad Catholicos. Patrini siquidem dicuntur ii qui solummodo desponsati lateri assistunt, nihil agentes vel dicentes quod vetitae participationis signum referre iudicetur ; et ita si in ista materiali praesentia nullum pertimescendum est scandalum, non erit cur anceps fluctuet missionarii animus.

In 1874, addressing the Vicar Apostolic of Colombo, the Holy Office formulated this *dubium :*[2]

Possuntnc Catholici intéresse quovis modo nuptiis Haereticorum, Schismaticorum. . . .

And the reply was :

De regula, *negative ;* tolerari tamen posse ut Catholici huiusmodi nuptiis civilis officii causa tantum, adsint, semoto scandalo et quovis perversionis periculo, necnon ecclesiasticae auctoritatis contemptu.

We might summarize the content of these replies by saying that the Congregations are, in principle, gravely opposed to the assistance of Catholics, especially in the capacity of official witnesses, at non-Catholic marriages. But at no point is it clearly stated that to assist as an official witness is active participation in an heretical religious ceremony and, therefore, everywhere and entirely unlawful.

We have examined the teaching of a number of authors on the point in issue. The results are interesting. It may be well to quote the statements of a few who can fairly be described as representative modern theologians. In Merkelbach we read :[3]

Numquam licitum est, in matrimonio coram ministro haeretico celebrato, fungi munere testis, sive paranymphi sponsam ducentis, non ad sponsum, sed ad altare vel ad ministrum, quia ipsi caeremoniae participando, et testis auctoritatem conciliando contractui, implicite ministri auctoritatem agnoscit.

Prilmmer puts it thus :[4]

S. Officium (1874) declaravit, tolerari posse, ut catholici adsint nuptiis haereticis et etiam mixtis coram ministro acatholico contractis *civilis officii causa* tantum, ' semoto scandalo. . . .'

1 Ibid., n. 1841.
« Ibid., n. 1846.
8 *Summa Th. Mor.,* i, ŋ. 756.
4 *Aianuale Th. Aior.,* i, n. 526.

And in a footnote to this he adds [1]

> Quare in istis casibus et sub istis condicionibus licitum est catholicis gerere munus domicilli honorariae, etc., vulgo bridesmaid vel best man.

Noldin states :[2]

> Haereticorum nuptiis in aliquo munere, e.g. testis, interesse, quod ad valorem matrimonii requiritur vel partem ipsius ritus sacri constituit, illicitum est quia est tacita approbatio falsae sectae. . . . Puellae, quae ut in America septentrionali principalem assistendam sponsae agunt (first bridesmaid), ex communi aestimatione solum civile officium praestare censentur.

Our correspondent has quoted a statement from Davis. This author continues :[3] 'For though to act as best man or bridesmaid may be regarded merely as a mark of courtesy, Catholics are often rightly scandalized and very little good comes of Catholics taking part in non-Catholic functions.' Mahoney, replying to the question : 'Is a Catholic permitted to assist at non-Catholic worship as bridesmaid at a wedding ?' writes :[4] 'The bridesmaid is always a difficulty, and on the border line, because the part is active. Some authors allow it on the supposition that the assistance is civil rather than religious. But one feels certain that these writers do not contemplate a bridesmaid actively assisting at an Anglican "Nuptial Mass" when the rite is deeply religious.' Lydon has this statement :[5]* 'It is held by theologians who have American conditions in mind that a Catholic girl *per se* does not sin by acting as witness for non-Catholic marriages even in church, since the ceremony is not regarded generally as sacred or religious. However, scandal must be avoided and, as a rule, the practice is to be discouraged.' Finally, O'Donnell, who may be taken as speaking for this country, in an answer to the question : 'Is it permissible for a Catholic to be a groomsman at a wedding in a non-Catholic church ?' writes :[0] 'It is not right, although the bishop of the diocese may, in special circumstances, give permission, but there must be very good reason before such permission should be sought.'

From all this[7] it seems to follow that to act as best man at a Protestant marriage is not certainly, in every case, active participation in an heretical religious service. We personally would maintain that there is such active participation when the

[1] Ibid., nota 62.
[2] *De Praeceptis,* n. 39.
[3] Loc. cit.
[4] *Questions and Answers,* ii, n. 377.
[5] *Ready Answers in Canon Law,* p. 149.
[*] *Moral Questions,* p. 66.
[7] Comments might well be made on some of the quotations. But we are only concerned now to give an over-all picture of the theological teaching.

ceremony is held in a Protestant church before a Protestant minister and when the best man is a necessary official witness. Doubt would, indeed, arise if the ceremony is not regarded as religious, or if it is divorced from religious surroundings, or if the best man stands merely in the category of an unnecessary witness. One or other of these hypotheses may frequently be verified. The fact that it may be regarded as doubtful whether a Catholic best man actively participates in the heretical ceremony would mean that, in practice, this procedure would not be a reserved sin, if only active participation were reserved by the bishop. For we must strictly interpret the law and extent of reservation.[1]

But the fact that it may be doubtful whether the assistance of the Catholic best man at the Protestant marriage is active does not end the matter. There remains canon 1258, § 2, which repeats the language of some of the replies quoted earlier. According to this paragraph, passive or material presence - f Catholics is merely tolerated at non-Catholic marriages, and that only when certain conditions arc verified. A fundamental requirement for the toleration of passive presence is that there be no proximate danger of scandal or perversion. Moreover, there must be a grave cause connected with a civil or honorific position. In cases of doubt regarding the gravity of the cause the approval of the bishop must be sought. Thus, when it is asked whether a Catholic may be present at a non-Catholic marriage, the question cannot be answered *in vacuo.* The circumstances of place, person and closeness of association, have to be taken into account.[2] On these will depend particularly whether or not there is danger of perversion and scandal. Light may be thrown on these circumstances by a law or pronouncement of the local ecclesiastical authority or by approved custom. These must be loyally observed. The local Ordinary is in the best position to decide whether and how far presence at non-Catholic marriages, funerals, etc., is likely to be a source of scandal and perversion in the particular situation. It is not possible, then, to lay down any categorical principle even for one country. Speaking generally, so far as we arc aware of the situation in Ireland, we think that, apart from special circumstances approved by the Ordinary, the assistance of a Catholic as best man at a Protestant wedding in a Protestant

[1] In Canon 2245, § 4, we read regarding reservation of censures: 'In dubio sive iuris sive facti reservatio non urget.' A similar principle may be applied to reservation of sin.

[2] Cf. Sabetti-Barrett, *Compendium Th. Mor.,* n. 154.

church would be the occasion of grave scandal and, therefore, unlawful—even, of course, in the hypothesis, that this assistance is not active. If the bishop has, for special reasons, prohibited all passive assistance,[1] then it would be sinful so to assist, even though, in a particular case, there is no danger of scandal.

Would this unlawful passive assistance come under the reserved case described as 'presence at heretical worship'? Many writers venture to state an *a priori* principle that when presence or assistance at non-Catholic services is made a reserved sin, or prohibited under censure, there is only question of active assistance. This principle does indeed provide a presumption for the solution of doubtful cases. But like all presumptions, it must cede to fact. There is no doubt that a bishop may, if the local circumstances warrant it, reserve the sin of unlawful passive assistance at heretical ceremonies. We have to ask then, in any particular case—what has the bishop done? What sin has he reserved? In the case under consideration we are dependent upon our correspondent's description of the reserved sin. The context may reveal the bishop's mind more fully. Taking the law as it is given in the query, it must be noted that the phrase 'presence at heretical worship' is wide, and can clearly cover both active and unlawful passive assistance. We would hold that it does in fact cover both, on the ground that since the law makes no distinction, neither should we.

PARTICIPATION OF NON-CATHOLIC IN CATHOLIC CEREMONIES

A number of non-Catholic pupils attend St. Mary's Academy. May the Sisters who have charge of the Academy bring some of the non-Catholic pupils to sing at Mass and Benediction with the Catholic girls and sisters in the parish church?

Sinn-Feiner.

In discussing the question of *communicatio in sacris cum haereticis,* the writers[2] make a distinction between the participation of Catholics in non-Catholic sacred rites and the participation of non-Catholics in Catholic prayers and ceremonies. The former is called *communicatio positiva.* The Code of Canon Law has formulated a clear principle, derived from the natural law, on which the liceity of such positive communication is to be

[1] This would be tantamount to a declaration that the conditions on which passive assistance is tolerated cannot, in the circumstances, be verified; cf. Priimmer, op. cit., i, n. 526.

[2] Cf. Priimmer, op. cit., i, n. 522.

decided.[1] Our correspondent's query is concerned with the participation of non-Catholics in Catholic religious worship. This is known as *communicatio negativa.* While participation in religious worship with non-Catholics is, in general, something to be avoided by the faithful, obviously the prohibition is less strict in regard to negative communication. But the Code does not formulate for us any general principle which deals with this form of communication. Of course, the Code forbids the inscription of non-Catholics as members of confraternities and pious associations. In the course of the last century or so we have had several replies from the Holy Office which may throw some light on our correspondent's problem. It may be well for completeness to set out, in chronological order, the relevant parts of these replies, with a few words of comment as occasion demands.

In 1820, the Holy Office was asked whether, in the absence of a Catholic organist, a non-Catholic might be admitted, in a temporary capacity, to discharge this function. And the reply given was :

> Remoto scandalo, vel scandali periculo, affirmative.[2]

It seems clear enough that an organist takes an active part in the sacred ceremonies at which he plays. In 1850 the following questions were submitted to the Holy Office :

> (1) Se sia lecito porgere torce o lumi accesi a qualsivoglia persona eterodossa qui ami assistere aile nostre funzioni ; (2) Se si possa permétterc che i fanciulli di genitori scismatici cscrcitino l'officio di ministri nella eelebrazione dei divini misteri.

The reply to the first question was

> Negative et ad mentem. La mente è che se, attese lc particolari circostanze non possono escludersi da tai cerimonia lc sole persone eterodosse, se n'escludano eziando i laici cattolici.

The reply to the second question was simply a 'Non posse permitti.'[3] In an Instruction of 1859, the Holy Office stated :[4]

> Illicitum est in sacris functionibus haereticos in chorum invitare alternis psallere, dare eis pacem, sacros cineres, candelas et palmas benedictas, aliaquc id genus externi cultus, quae interioris vinculi et consensionis indicia iure meritoque existimantur, tam in sensu activo, nimirum similia eis dando, quam passivo, ab eis in eorum sacris accipiendo.

But in the matter of Sacramentels this discipline is somewhat modified by the Gode law. Canon 1149 states that blessings

[1] Canon 1258, §§ 1, 2.
[2] S.C.S. Off., 23 February, 1820, *Codicis Juris Can. Fontes,* iv, n. 858.
[3] S.C.S. Off., 20th November, 1850, *Collectanea Congreg. de Prop. Fide,* n. 1840.
[4] S.C.S. Off. Instr., 22nd June, 1859, *C.I.C. Fontes,* iv, n. 952.

may, ‘ nisi obstet Ecclesiae prohibitio,’ be given to non-Catholics ‘ ad obtinendum fidei lumen vel una cum illo, corporis sanitatem.’ And canon 1152 allows the exorcism of non-Catholics. In 1864, the Holy Office answered a number of questions among which was the following cl

Si possono gli eretici far cantare nelle nostre chiese cd assistere all'altare per servire la Messa.

And the reply was :

Ad utramque partem : negative.

In 1906, a case, which has certain similarities to that of our correspondent, was proposed to the Holy Office in the following terms :1

Sophiae Sorores quaedam religiosae Institutum puellarum (Pensionat) dirigunt, in quo cum catholicis etiam schismaticae admittuntur. Mos invaluit ut in functionibus ecclesiasticis ac praesertim in expositione ac benedictione cum Sanctissimo uti etiam ante et post illam, puellae schismaticae una cum Catholicis in ecclesia paroechiali canant. Unde petit orator an hic usus tolerari possit, habitis sub oculis sequentibus animadversionibus : (1) Agitur de loco in quo numerus Catholicorum, relate ad schismaticos, est valde exiguus. (2) Nullum adest periculum scandali, namque isdem usus servatur in fere omnibus Orientis regionibus. (3) Adest contra spes conversionis acatholicorum. (4) Durum esset Sororibus, quae Institutum dirigunt, puellis schismaticis sponte ac lubenter in ecclesia cum catholicis cantantibus silentium imponere. (5) Denique eaedem puellae schismaticae, utpote bona fide in schismate viventes, non videntur uti cxcommunicatae esse habendae.

The Holy Office replied :

Prout exponitur casus, . . . tolerari posse.

There might seem, at first sight, to be a certain lack of consistency in these various replies. But the general principle emerges intact : active participation of non-Catholics in Catholic religious rites is generally prohibited. The prohibition, however, is not absolute. The attitude of the Church to this participation is somewhat analogous to its attitude regarding the material or passive assistance of Catholics at certain non-Catholics religious functions. Such assistance may be tolerated provided there are sufficiently grave reasons and provided there is no danger of scandal or perversion.3 Negative communication may be tolerated under similar conditions. We should say, then, in reply to our correspondent's question, that the participation of the non-Catholic girls in the singing at Mass and Benediction may be tolerated if their exclusion would

1 S.C.S. Off., 30th June, 7th July, 1864, ibid., n. 978.
2 S.C.S. Off., 24th January, 1906, ibid., n. 1276.
#Cf. Canon 1258, §2.

seriously upset the school arrangement or discipline and if there is no danger of scandal. These conditions will have to be examined carefully in the light of the particular circumstances. But it seems to us that the conditions might be verified in that part of the United States from which the query comes. We think, too, that the conditions arc more likely to be verified when the number of non-Catholics who sing in the choir is small relative to that of the Catholic participants. In this circumstance there might also be a greater hope of edifying and converting the non-Catholic participants and the danger of scandal or *admiratio* would be lessened.

PRESENCE AT PROTESTANT PRAYERS

Would you kindly state what attitude a priest should adopt during a prayer said aloud by a Protestant minister at the opening of a meeting at which only the priest and a few ministers are present ? Would he for the sake of courtesy be allowed to stand with the others, or would such an action savour of *communicatio in divinis* ? It is understood, of course, that the meeting is purely secular in character, and that it does not take place in a church. Possibly, I should add that it is essential that the priest should, in the interests of his congregation, be present.

Jacobus.

The general principles which govern the assistance of Catholics in non-Catholic services and prayers are familiar to our readers. The faithful are forbidden to assist actively or formally in the religious services of non-Catholics. Passive and material assistance at certain of those sendees may be tolerated if there is a grave cause, and provided the danger of perversion and scandal is absent.[1] If there is a doubt regarding the sufficiency of the cause, the bishop is to be consulted. Active assistance means taking part in the recitation of the prayers or joining in the liturgical actions of the service. Formal assistance implies approval of the non-Catholic service and the intention to worship God by it. There is no question of active or formal assistance in the case submitted by our correspondent. His assistance is passive and material, which means, in effect mere non-approving presence on the occasion of the recitation of Protestant prayers. There is no danger of perversion or of scandal in the case. There is a sufficiently grave cause for

1 Canon 1258.

permitting the passive and material assistance of the priest. The meeting is purely secular in character. The opening prayer is only incidental—or accidental in the philosophic sense. It is essential in the interests of his congregation that the priest should attend. The priest may stand with the others—remaining silent, of course—during the recitation of the prayer. The rules of courtesy seem to demand that he should do so and, therefore, we think that the priest should stand.

COMMON PLATFORM FOR PRIEST, PARSON AND RABBI

We read of and hear over the radio in the United States of a Protestant minister, a Jewish rabbi and a Catholic priest appearing on the same stage to help to bring about the so-called 'good neighbour' policy by delivering talks against prejudices. Is this lawful?

Exile of Erin.

The world to-day has reached a sorry pass, because it has departed from the law and charity of Christ. Earnest-minded men in many lands are very much aware of, and are appalled by, the prevailing state of things, and are more than anxious as to what the future may hold. They have set themselves to find a way out of the welter and confusion to a peace and social reconstruction in a post-war world modelled on Christian lines. They feel that in order to secure this end more effectively, in fact, many say, in order to secure it in any degree, there must be co-ordination of purpose and effort by all who have the future of humanity at heart. Accordingly, attempts have been, and are being, made to bring honest men together, irrespective of their creed, into a great movement of Christian co-operation. Thus interdenominational organizations and meetings for discussion of the position and of the various relevant problems have become a prominent feature of life in the United States and in Great Britain within the last few years. In the United States, as a typical example of the organizations we have in mind, there was the 'National Conference of Christians and Jews'; in Great Britain we have had 'the Sword of the Spirit.'

The precise definition of the nature and extent of lawful Catholic participation in this movement of interdenominational co-operation and, in particular, in some of the activities associated with the movement have presented the theologians with new and difficult problems. Already many articles have

appeared in theological magazines[1] in England and in America in which prominent writers deal with, and suggest answers to these problems. Our correspondent, who writes from the United States, will, doubtless have seen the excellent articles which have been published in *Theological Studies*[2] and in the *American Ecclesiastical Review*,[2] so that it is not necessary for us to discuss the matter here at any great length. The situation described in the query under consideration is apparently one of very common occurrence in the United States. Three ministers of religion—Catholic, Protestant and Jewish—join forces to present, from a common platform, the case for tolerance and against prejudices, to an interdenominational audience. We understand that this conjunction of forces is commonly referred to as the 'trio.'[4] Clearly there is no question here of any religious services being performed and, consequently, there is no such *communicatio in sacris* as is contemplated in, and forbidden by, canon 1258 in echo to the divine natural law.

It seems that the tripartite platform appearance described by our correspondent consists in some kind of statement and discussion. But we have no clear conception as to what matters are discussed. Obviously this is a vital consideration. Our correspondent mentions that the object of the meeting is the promotion of a 'good neighbour policy' which, in itself, appears to be a perfectly laudable purpose. It seems to be merely the expression, and the putting into force, of Christ's law of fraternal charity. If the discussion be kept on a profane basis we should see no reason to object to the whole procedure—apart from the danger of *scandalum pusillorum,* which, in the circumstances, would be very unlikely. If there were such danger by reason of the conjoint appearance of the priest with the ministers of false religions, a timely and suitable explanation might dispel it. But our correspondent refers to a 'so-called' policy, implying doubt, and he refers to talks against prejudices. This latter description could cover many things: the talks might take many forms. We are not told the nature of the prejudices, but there is a clear hint that the talks have a distinctly religious flavour. If the purpose or the result of the talks is to create the impression that one religion is as good as another, that religious prejudices are wrong in the sense that we Catholics

[1] Cf. *The Clergy Review, The American Ecclesiastical Review, Theological Studies, Homiletic and Pastoral Review.*

[2] September, 1942, December, 1942, February, 1943.

[3] November, 1941.

[4] Cf. La Farge, 'Some Questions as to Inter-Denominational Co-operation' *Thiol. Studies,* September, 1942, p. 319.

must tolerate the error as we tolerate the erring—then the whole discussion is vitiated, and is forbidden by the natural law itself. There would be the proximate danger of perversion and indiffcrentism. This danger apart, Catholics are forbidden to have public disputations or debates with non-Catholics, without the permission of the Holy See or, in an urgent case, of the local Ordinary. This requirement is stated clearly in canon 1325, §3. We need hardly repeat once again that the natural law would prohibit such discussions if there were danger of perversion or indifferentism.[1]

In the light of the general principles of co-operation with non-Catholics, and taking into account the conditions of which we are aware, we must say that we should look with grave suspicion and disapproval upon the procedure described by our correspondent. We are presuming that the discussions have a decidedly religious flavour, and that the Catholic priest may not or will not, according to the rules of the game, point out the falsity of the non-Catholic position. In such circumstances, given a general audience, it seems inevitable that there is considerable danger of indifferentism and perversion, a danger of equiparating truth and falsehood. But we Catholics cannot forget, and cannot be allowed to forget, that truth is one and that we have the truth; that ours is the one true Church founded by Christ, the Church which possesses exclusively the true Christian doctrine, the divine deposit committed by Christ to her care. We cannot tolerate doctrine other than our own, for such doctrine is false. If we were to presuppose that the danger of indifferentism or perversion is remote, we should still have to ask ourselves the practical question: what advantages are to be gained from these public inter-denominational discussions? Are the advantages such as would offset, or compensate for, the dangers? We cannot see that any appreciable advantages would result to the Catholic cause in a country like our own.

Let us repeat that we have been speaking in the light of the general principles and the conditions prevailing in Ireland. Outside that limited sphere we cannot presume to give an opinion. We cannot say what are the reactions of American Catholic audiences to the discussions mentioned by our correspondent. We cannot estimate what danger of scandal or

[1] Various circumstances must be taken into account, in particular those concerning the audience and the manner of discussion are relevant here. Cf. Bouscaren, 'Co-operation with Non-Catholics—Canonical Legislation,' *Theol. Studies,* December, 1942, p. 496, et seq.

indifferentism there is. That is a question of fact. But we have noted that American theologians are not fully in agreement on the fact—which is an indication of the difficulty of giving a final decision on the problem. One theologian reaches the following conclusion on the question 'I am fully convinced that . . . ordinarily the association of Catholics with non-Catholics in such organisations and meetings is a grave menace to the faith of our people . . . that whatever good they may be producing is far outweighed by their disastrous spiritual consequences.' This theologian has stated a view similar to that which we have given above in relation to circumstances within our own sphere of knowledge. Another American theologian has written :[2] 'It would seem that there has been no feeling amongst Catholics that such a movement would be misunderstood by ill-instructed Catholics.' On this a third theologian[3] has fairly commented that 'supposedly, there would be even less danger of misunderstanding on the part of well-instructed Catholics.' The ecclesiastical authorities in the United States have the facts, and they may decide the extent and the activities of inter-denominational co-operation which would be lawful for Catholics, and what safeguards it may be necessary to provide. Or they may decide to apply to the Holy See for direction in the matter.

MAY A PRIEST GIVE PROTESTANT MINISTER BREAD AND WINE FOR A COMMUNION SERVICE?

In a small town, after an anti-prejudice meeting which was addressed by a Catholic priest, a Protestant minister and a Jewish rabbi, the Protestant minister wishes to hold a religious service in the episcopalian church. He discovers, however, that there are no breads or wine for a communion service. May the priest, if requested to do so, give to this Protestant minister (old) breads and wine?

Exile of Erin.

As a corollary to the preceding question we are asked, by the same correspondent from the United States, whether a priest may, on request, provide the matter for a Protestant communion service ? It is not stated, though by the conjunction

[1] F. J. Connell, C.SS.R., *Catholics and "Interfaith" Groups,' *American Ecclesiastical Review,* November, 1941.
[2] H. T. Hcnny, 'Our Separated Brethren,' art. in *Homiletic and Pastoral Review,* December, 1940.
[3] Father Murray, S.J., *Theological Studies.* September, 1942.

of the two queries in our correspondent's letter it is implied, that the accommodation of the minister by the priest would be regarded and expected as a gesture along the anti-prejudice lines of the meeting. Or, to put it the other way round, it is implied that refusal on the part of the priest might, in the circumstances, be interpreted by his platform associates as failure to give practical evidence of the genuineness of his belief in the platform on which he had stood with them. The implication, if it is true and it may well be true, serves to emphasize what we have said in our previous reply—namely, that there seems to be an inherent danger of indifferentism in this platform association of priest, parson and rabbi in their mission against prejudice.

In the circumstances it will, indeed, be difficult for the priest to refuse the request of the minister without seeming, perhaps, to undo and to unsay what has been proclaimed thrice over from the platform. And yet we have not the slightest hesitation in saying that the priest must refuse the request; that he may not give the minister the breads and wine for the communion service. It does not matter whether the breads are old or fresh, nor whether he puts the wine into new or old bottles! Of course, there is no question here of formal co-operation with the non-Catholic minister in the heretical rite.[1] But there is question of proximate, necessary and efficacious material co-operation in what is objectively a very serious sin—the sin of idolatry.[2] Many of the participants in the Protestant communion service will doubtless regard the matter as validly consecrated, and may receive it or adore it as such. The action of the priest in providing the material for the service is proximately connected with this material idolatry. His co-operation is necessary and efficacious—with it the service takes place; without it the service cannot be held. It is a well-known principle that one may, by a good or indifferent act, co-operate materially with another who acts sinfully, provided one has a proportionately grave cause. To determine the sufficiency of the cause which justifies such a procedure, several factors and, in particular, the nature of the material co-operation must be

[1] Such formal co-operation could never be lawful.

[2] Cf. Aertnys-Damen, *Th. Mor.*, i, n. 407. The Holy See has frequently declared that it is never lawful to make or sell idols for the purpose of worship. 'Ratio videtur esse quia continent cooperationem materialem ad opus adeo iniuriosum Deo ut nulla causa excuset.' Wouters, *Th. Mor.*, i, n. 557. The same remarks might be made in regard to providing hosts for a Protestant service, cf. Davis, *Moral and Pastoral Theology*, i, pp. 286-7; Noldin, *De Praeceptis*, n. 122.

more closely considered. And once again a general principle may be stated that the more serious the sin in which co-operation is given, the more proximate, necessary and efficacious the co-operation, the graver the cause that is required to justify it.[1] The avoidance of causing some offence to his platform associates or other non-Catholics is certainly not a sufficient cause to justify the priest in giving material for the Protestant communion service.

In fact it would be very difficult to conceive a cause which, in the circumstances, would justify the priest in acceding to the minister's request.[2] For, over and above all that has been said, there would be, in the situation as outlined, the serious danger of scandal. The presence of this danger would also prohibit the priest from accommodating the minister in the manner mentioned. There is question of a small town. The fact that the priest had helped out the minister might easily come to the knowledge of some of the laity, and if it did, it would, likely enough, become common knowledge, as, presumably, small towns, even in the United States, are not so very different from small towns in other parts of the world. The faithful would be very much scandalized by the action of the priest. In estimating the gravity of scandal—even indirect scandal—account must be taken of the quality and status of the scandal giver. The principle might be stated thus : *scandalum ab optimo pessimum.* As a result of the priest's action many might be led to think that the different religious services were not so different after all. Thus once again indifferentism would raise its ugly and pernicious head. And all this because the priest felt he could not say ' no ' to the request of the minister, lest his refusal should be interpreted as a prejudice.

IMPLICIT DENIAL OF THE FAITH

Titius, a youth, has to appear before the board of management of a factory where he is seeking employment. He is told that he will not be asked directly about his religion, but that he will be asked the name of the school which he attended and that, since it was a Catholic school, he will certainly be eliminated from the list of *personae gratae* for the final choice. He is, in fact, asked the question, and yielding to his father's suggestion, gives the name of a school some distance

[1] Gf. St. Alphonsus, *Th. Mor.,* l. 2, n. 59.

[2] Lehmkuhl *(Th. Mor.,* n. 657) writes in regard to idols: 'Si postulantur ab idololatra qui vult iis uti ad superstitionem, sola gravissima causa excusare potest cooperantem a peccato.'

away, attended exclusively by non-Catholics. Has a sin against faith been committed in this case? If not, what virtue has been violated, gravely or lightly?

L. F.

In our opinion Titius has committed a sin against faith. His assertion that he had attended an *exclusively* non-Catholic school is tantamount to an implicit denial of the true Faith or, which is the same thing, to an implicit profession of a non-Catholic religion. It is clear enough that Titius does not wish really to deny his Faith, that he does not do so internally but only fictitiously—nevertheless his manner of reply is such that, in the circumstances, it involves external denial.[1] And this is a sin against faith.

Quatenus est negativum praeceptum confitendi fidem prohibet, ullo umquam casu vel periculo etiam mortis, expresse vel tacite, verbo vel signo vel facto (silentio v.g.) fidem exterius negare vel falsam profiteri aut simulare. . . . Quod fieri potest dupliciter (a) directe et explicite. . . . (5) indirecte et implicite, si absque intentione negandi actionem ponit quae ab aliis ut negatio fidei habetur.[2]

We may add here that Titius intends, by his reply, to give the board of management the impression that he is a non-Catholic—and, in fact, though this is a matter of very secondary importance, he does give this impression.

We realize well the difficulty in which Titius and his fellow-Catholics are placed and we sympathize deeply with them. The board of management has no right or title to intrude its bigotry and to make religion an issue in its appointments. Titius might lawfully, in the circumstances, by an evasive answer, if such were available, conceal or dissimulate his Faith and so deceive the board.

Fidem dissimulare vel occultare licet si sequentes conditiones verificantur : (a) si non obligat positivum praeceptum confitendi fidem ; (b) si actio occultans est in se indifferens . . .; (c) si adest ratio proportionate admittendi hanc deceptionem aliorum.[3]

There is no difficulty here about the first condition, except in so far as it merges into the second. We take it that, bigoted though the board is, the question regarding the school was not formally posed in *odium fidei.* Nor have we any difficulty about

[1] Cf. Canon 1325, §1 : 'Fideles Christi fidem aperte profiteri tenentur quoties eorum silentium, tergiversatio aut ratio agendi secumferrent implicitam fidei negationem. . . . .'

[2] Merkelbach, *Summa Theologiae Moralis,* i, n. 712. Cf. Noldin, *De Praeceptis,* n. 20.

[3] Noldin, op. cit., n. 22.

the third condition. There is a proportionate cause, and, moreover, as we have said already, the board has no right to introduce religious issues. The obstacle is the second condition. It seems to us that the positive assertion of Titius implies, as it stands, more than dissimulation. Perhaps, there might be conceived the building up of a universe of discourse in which it would be generally understood that such a positive assertion should be interpreted, not at its face value, but as a mere evasion by Catholics of an unwarranted question. But, to our knowledge, this universe of discourse does not yet exist. If Titius declared that he had attended a mixed or undenominational school, we should say that he was guilty of a venial sin against the virtue of veracity, but not of a sin against faith.

SUPPORT OF DANCE IN AID OF PROTESTANT CHURCH

A Protestant minister got up a dance to raise funds to pay for some necessary repairs in his church, charging an entrance fee. A number of local Catholics went to the dance. Were they justified in doing so?

Perplexed.

In 1822 the Sacred Penitentiary was asked whether it was lawful for Catholics to contribute money for the erection of heretical temples. The following reply was given:

Affirmative, sed tantum ad se suaque templa ab incommoda ilia ac scandalosa cum Protestantibus simultaneitate liberandum.

That reply may, we think, be fairly interpreted as applying even directly to contributions for repairs.[1] In the area from which 'Perplexed' writes there is little danger of Catholics and Protestants having to use a common church even if the Protestant building collapses! In our opinion, therefore, the local Catholics were not justified in supporting the dance in aid of funds to repair the Protestant church. It could possibly be argued that their action would be lawful if the church had great historic or artistic interest and was worth preserving from that standpoint—provided there was no scandal. It would, we think, be very difficult to avoid giving scandal by this form of support in Ireland. Yet, in this matter, much will depend upon local circumstances, and upon the particular relations between Catholics and non-Catholics in the locality.

[1] Cf. Davis, *Moral and Pastoral Thiology,* i, p. 287.

CATHOLIC SUPPORT OF FUNCTIONS IN AID OF PROTESTANT CHURCHES

May Catholics take part in functions organized for the repair and improvement of a Protestant church ? For instance, may they become members of a silver circle, subscribing one shilling a week and participating in the weekly draw for prizes, when the purpose of the circle is to provide funds for the maintenance of the Protestant church ?

Vicartus.

The financial support by Catholics of functions organized for the purposes mentioned is a form of co-operation in an heretical religious work—namely the maintenance of heretical worship. The co-operation, however, is only material—and, in the instance given, is remote. Such co-operation may be lawful. It will, in fact, be lawful, provided it does not give rise to scandal, or contempt for the true religion, and provided there is a sufficient justifying cause. It is often difficult to decide when these conditions, especially the last mentioned, are verified. The particular circumstances of each situation will have to be examined. The local custom and attitude will be of particular importance in estimating the danger of scandal.

In some cases of material co-operation, of one kind or another, in the building and repair of Protestant churches, a strict ruling has been given by the ecclesiastical authorities. For example, the Cardinal Vicar of Rome issued this instruction in 1878 :

Neque eximuntur a peccato mortali architecti, conductores opificum, domini qui curam et operam suscipiunt ad extruendum et ornandum aliquod templum protestanticum. Quod ad ipsos vero murarios aliosque opifices subalternos pertinet, ii possunt a peccato excusari modo desit scandalum neve quae facere jubentur, fiant in contemptum religionis.[1]

The authors[2] point out that there was a particular reason in Rome at that period why Catholics should not co-operate in the building of Protestant churches. In 1822 the Sacred Penitentiary was asked if Catholics might lawfully contribute to the building of heretical temples. The reply was :

Affirmative, sed tantum ad se suaque templa ab incommoda ilia ac scandalosa cum Protestantibus simultaneitate liberandum.

This reply has been interpreted as generally prohibiting contributions by Catholics to the upkeep and repair,[4] as well as to the building, of heretical churches. The reply states that such

[1] Cf. Prümmer, *Manuale Th. Mor.*, i, n. 620.
[2] Cf. ibid., et Noldin, *De Praeceptis,* n. 122.
[3] Cf. Prümmer, loc. cit.
[4] Cf. Davis, *Moral and Pastoral Theology,* i, p. 287.

contributions arc lawful only when they are necessary to enable Catholics to have a separate church for their divine services. But this necessity does not arise in Ireland—or, indeed, in many countries to-day. It might seem, then, to follow from the reply that Catholics in Ireland may never, in any circumstances, make contributions towards funds for the maintenance of heretical churches. Yet, we believe, that this conclusion is too strict.[1] While the reply of the Sacred Penitentiary mentions only one reason we think that there may be other reasons which would justify Catholics, in Ireland and elsewhere, in making some form of contribution. Noldin writes :[2]

Ex quo responso (S. Paenitentiariac) duo colliguntur : primo quidem actionem ipsam conferendi pecuniam non esse in se malam, deinde vero S. Pacnitentiariam solum causam damni communis sufficientem indicasse ut haec cooperatio excusari possit. Nihilominus auctores gravem causam damni privati quoque hanc cooperationem excusare posse arbitrantur.

In order to decide what causes, other than that mentioned in the reply, would justify the material co-operation of Catholics, it is necessary to make some distinctions and explanations. There is a difference between making contributions towards the erection of an heretical church where none existed before, and contributing to funds for the repair or maintenance of an already established church. Account should also be taken of a situation in which Catholics and Protestants live harmoniously together in the community and where the Protestants do not indulge in any form of proselytism but willingly support functions for Catholic church funds. In such a situation a complete refusal by Catholics to reciprocate, or to co-operate in any way with, functions organized in aid of funds to maintain the Protestant church building might easily lead to bad feeling. In the light of these explanations, we would suggest, as a safe guiding rule, that Catholics may lawfully co-operate remotely in these functions where failure to do so might upset the harmonious relations and mutual goodwill which exist in the community. The possibility of such a consequence can be listed—to use the distinction made by Noldin—as a *causa damni communis.* In suggesting the above rule we presuppose, of course, that there will be no question of the co-operation's causing scandal—we discount pharisaic scandal—or leading to contempt for the true religion. We have confined our rule to cases of remote co-operation. Obviously, the more proximate the material co-operation, the greater the cause that will be

[1] Cf. reply of Holy Office, 7th July, 1864 *(Collect, de Prop. Fid.,* n. 1257).
[2] Loc. cit., cf. Marc, *Instit. Mor.,* i, n. 523 ; Gemcot, *Th. Mor.,* i, n. 237.

necessary to justify it. The cause we have mentioned in the suggested rule would not justify forms of co-operation which imply initiative on the part of Catholics in, or which involve their close association with, the organization of the functions. But as has been pointed out, the co-operation instanced in the query is remote. The Catholics simply make a small subscription in return for which they have a chance of a prize. To reply directly, then, to our correspondent's query, we would say that, if the cause mentioned in our rule is verified in the situation of which he writes, Catholics may become members of the silver circle. If there is doubt about the existence of the cause, or the danger of scandal, the local Ordinary should be consulted.

CO-OPERATION IN THE OXFORD GROUP MOVEMENT

We would be grateful for your remarks upon the following quotation taken from an article by Dr. Christian Richard, in the *Catholic World* (September, 1937).

'The Broken Equilibrium

'The only remedy is the Spiritual Front to which the last encyclical of the Pope called Christendom. - - - I read in various papers, particularly the *Journal de Genève,* that the Oxford Group had won the personal interest and co-operation of some of the most outstanding and influential political and educational leaders in Europe - - - - and that the meetings of the Oxford Group were of such a nature that they definitely influenced public life on a national scale.'

'I began to sense the significance of the Oxford Group for the restoration of the broken equilibrium of the world if it met with more general co-operation. The fact that the Oxford Group has no particular creed, no ecclesiastical organization or government, makes this an unprecedented means of co-operation between Catholics and Protestants and all other serious-minded people.'

Study Circle.

The Oxford Group (Buchmanite) Movement has been frequently discussed in the Catholic Press of this country and of England. There have not been wanting writers who, apparently unaware of the real meaning of this movement, have advocated the co-operation of Catholics in the Group meetings. It is true that the aims and ideals of the movement correspond closely, in theory, with the aims and ideals of Catholic teaching. And it has been claimed that association with this Group Movement has been instrumental in bringing back Catholics to the practice of their religion. But a close

analysis, by competent writers,[1] of its origin, aims, practices doctrines and organization has shown that the movement is nothing more or less than a heretical religious sect. It claims that it supersedes all previous religious systems; that it is a new leadership with a new and powerful spiritual dynamic—the only real effective spiritual dynamic. It thereby implicitly denies the leadership and the means of grace entrusted to the hierarchically constituted Church of Christ. Adherence, therefore, to this movement means for Catholics the rejection of the Catholic Church. Active co-operation of Catholics in the religious meetings of the Group is always wrong;[2] and we do not think that the conditions, in which passive assistance at those meetings may be tolerated, can, from the nature of the case, be present.[3]

If, then, in the quotation given, Dr. Richard means to suggest that Catholics should, or may, co-operate in the religious meetings of the Group Movement, his statement must, of course, be rejected. He is not quite correct in saying that the Buchmanites have no particular creed, no ecclesiastical organization or government. We think, however, that Dr. Richard is rather concerned to suggest the possibility, necessity and incalculable value of an united Christian front against the paganism of to-day in its many forms. The wide acceptance of the reality of the supernatural and of Christianity would, indeed, be a great step forward. Catholics may well sympathize with the efforts of sincere non-Catholic Christians to find a centripetal force which would draw them together in Christian unity. The Oxford Group Movement may, indeed, provide that force. It has, we are told, already exercised tremendous influence. And it may be that, in these days when material forces and hopes are being shattered, men will listen more willingly to the call of the spiritual and the mystic in them. Thus, many non-Catholics may find balm for their tortured souls in the sharing, surrender, substitution and guidance of the Buchmanites and in the practice of the four absolutes. In all this they may find a certain Christian solidarity. Catholics may sincerely sympathize; but they cannot share. They have

[1] The 'Study Circle' will find in the *I. E. Record* (December, 1936) a detailed analysis of the movement by Dr. Browne (Bishop of Galway). The conclusions we give briefly are based on his article, the full text of which the 'Study Circle' will find very instructive and helpful. It has been published as a pamphlet by the C.T.S. (London). There have also been many practical discussions on this question in *The Standard,* by S. T. D., and in *The Catholic Herald* by various contributors.

[2] Canon 1258, § 1. [3] Ibid., § 2.

the reality : the guidance of the infallible Church of Christ, the divinely provided sacramental helps, the Mass, the solidarity of living membership of the Mystical Body of Christ. To seek beyond is to pass by the reality in pursuit of a shadow ; is, which is worse, to neglect and to reject the truth that gives light and life for what is, at best, only half truth.

CATHOLICS AND THE MORAL REARMAMENT MOVEMENT

What is the Catholic attitude to the Moral Rearmament movement ? It has penetrated into Nigeria, where the nationalist press has given it great prominence. It has found supporters among members of, possibly, the biggest nationalist party. Episcopal statements have been quoted in support of the view that Catholics may be members of the movement.

Missionarius.

The Moral Rearmament movement which is widely known and is much publicized to-day has evolved from an association which originated half a century ago. In 1908, Dr. Buchman, a Lutheran minister, announced that he felt, as a result of some spiritual experience, a special call to reform his own life and the lives of those with whom he came into contact. He began his work of crusading for this moral reformation in the university of Pennsylvania. In the early twenties he transferred his activities to Oxford, where he formed a small group of Protestant students into an organization known as ' First Century Christian Fellowship.' Many of the members of this organization became ardent disciples and have since been working for the spread of the movement throughout the world. Subsequently, and incidentally quite by accident, the organization came to be known as the ' Oxford Group Movement.' Under this *soubriquet* it spread widely in Protestant countries. In 1938, when the clouds of war began to loom so ominously over Europe, Dr. Buchman felt that even greater and more vigorous efforts were urgently needed to reform the world and so he set himself to re-launch his movement under the title ' Moral Rearmament.' Dr. Buchman's thesis is that die reformation of the world can only be achieved by the creation of a new moral and spiritual force, by convincing all men of good will of the necessity of conforming their lives to the four absolutes : honesty, purity, unselfishness and love. During the war years, progress and propaganda were inevitably somewhat

restricted, but since 1945 there has been a tremendous growth of the movement in almost every country outside the Communist dominated areas. The movement has now its centre at Caux in Switzerland and much has been written of the cosmopolitan quality of the members from every level of society who gather there at the great central hostel, Mountain House, and of the wonderful spirit of peace, harmony, co-opcration and spiritual uplift which characterizes and pervades their association. There is no denying that Moral Rearmament has become a far-flung movement and that it has a tremendous spiritual impact on the lives of its members. It has been claimed that association with the movement has been instrumental not merely in reforming the individual lives of countless numbers but that it has also been the means, in many cases, of preventing social disagreements and conflicts. The movement is anti-communist and is regarded by its founder and leaders as the one great force which can effectively stem the tide of materialistic and atheistic ideologies.

Mention has been made of the four absolutes—the four virtues, the practice of which, in the thesis of Dr. Buchman, is the starting-point and, indeed, the essence of moral rearmament and reformation. As helps to this practice, and to the further development of their moral life, the members of Moral Rearmament engage in the exercises of sharing, surrender, substitution and guidance. This guidance is received mainly during the daily quarter-hour of interior silence when the Spirit will speak to the soul, and direct and encourage it in the practice of the four absolutes. The reality of the spiritual and the purifying power of Christianity are accepted as basic in the movement.

The general aims of Moral Rearmament are highly laudable. The achievements arc notable. Beyond doubt, the movement has been of great moral help to many of its members and it could well become, for a large section of humanity, a rallying ground against the immoral and anti-spiritual forces which threaten civilization. All Catholics must sympathize with the efforts of sincere non-Catholics to find and practise a common spiritual and Christian ideal which will serve to bind them together in a united effort to effect the moral reformation of the world. It is pathetically obvious that some such common ideal and binding force is sorely needed in these days by men of good will outside the Catholic Church. The Catholic attitude to Moral Rearmament might be said to be one of sympathy and encouragement towards a movement which is a step in the right direction and which, ultimately under God's

providence, might end within the portals of the Church which was founded to embrace and reform the world. But this does not mean that Catholics may formally share in, or become members of, Moral Rearmament. In our view, it is clear that they may not.

Moral Rearmament, despite the many protests to the contrary, seems obviously to be a religious movement. An analysis of its origin, aims, doctrines, practices and organization points inescapably to this conclusion. Some of these elements show a close affinity with those of long established religions and, in some points, with those of the Catholic Church. But in Moral Rearmament we have proclaimed a new leadership and a new spiritual dynamic aiming at the creation of a new social order under the influence of the Spirit. It may be granted that Moral Rearmament is not a new sect in the ordinary sense of the word. It is asserted that it is outside, better, perhaps, *above,* all organized religions. It might be described as a super-sect incorporating much of the common denominator of the highly organized Christian groups. Yet there is a strong Protestant flavour. The movement is Protestant in its provenance, in its outlook, in its tendencies. In face of all this it seems idle for the leaders of Moral Rearmament to protest that it is not a religious movement. Protestations cannot alter facts.

It is hardly necessary to remark that Catholics may not become members of, or actively co-operate in, non-Catholic religious movements.[1] To do so would be equivalently to reject the one spiritual society founded by Christ and vested by Him with infallible authority to direct men in faith and morals, and thus, ultimately, to secure the reformation of society and of the world, and the salvation of mankind. As has been remarked earlier, Moral Rearmament may prove to be, for those outside the Catholic Church, a source of moral help and unified effort. But Catholics are not dependent upon these adventitious aids. They have at their disposal the helps established by Christ : the guidance of an authoritative and infallible teaching authority, the divinely instituted means of grace, the Mass and the Sacraments, the unity and solidarity of membership of the Mystical Body of Christ. Catholics, therefore, need not and should not seek outside the Church for spiritual aims, leadership, guidance or means of moral reformation. In the Catholic Church they have the realities. Outside it can be found only substitutes which, at best, are only

[1] Canon 1258, §1.

comparatively weak and beggarly. The substitutes can have some value for those who have not the realities. But it is the highest form of folly and infidelity to seek out, or to rely on, substitutes when the realities are at hand.

It seems, however, that some continental Catholics have become members of Moral Rearmament, and they allege that they have found in it great helps in reforming their lives. Some of the leaders of Moral Rearmament claim—and it is a ground for boasting—that many lax Catholics have been, through their membership, led back to the practice of their religion. Moreover, it has recently been asserted that some of the Catholic bishops would allow their subjects to be members of Moral Rearmament. A survey of the whole question was made some years ago in the French fortnightly religious review *L'Actualité*.[1] In the course of this survey the statements of a number of bishops were quoted. The main burden of these statements is that Moral Rearmament must be regarded as a non-Catholic religious movement and that, therefore, it is unlawful for Catholics to be members of it, or formally to participate in its specific activities. The Bishop of Strasbourg wrote, in 1936 :[2]

> Le mouvement d'Oxford est protestant, par son origine, par son caractère, par ses tendances. Il n'est pas plus permis à un catholique d'en suivre les exercices que de prendre part à un culte protestant ; il lui est défendu d'y adhérer, comme il lui est interdit de passer au protestantisme.

Reference is next made in *L'Actualité* to the opinion of Dr. Browne, the bishop of Galway, who, writing in the *Irish Ecclesiastical Record*,[3] concluded that Catholics were not permitted to be members of the Oxford Group Movement, or to take an active part in its meetings ; and that there were insufficient reasons to justify even passive assistance as a spectator at these meetings. In 1938 Cardinal Hinsley published a prohibition along these same lines. The writer in *L'Actualité* notes that these statements were made prior to the foundation of Moral Rearmament properly so called. Can it be suggested then that the movement has so evolved in the intervening years that Catholic membership of it could now be tolerated ? The forthright condemnation of Moral Rearmament by Cardinal Schuster in 1952 is an emphatic denial of any such suggestion. The Cardinal wrote

[1] 1. October, 1953, pp. 15-23.
[2] Ibid., p. 20.
[3] xlviii (1936), p. 643.
[4] *L'Actualité*, p. 21.

Le mouvement est dangereux pour les catholiques, parce que, Jésus-Christ, ayant envoyé son Esprit sur l'Eglise pour qu'il l'introduise dans la vérité tout entière, les membres du Mouvement de Réarmement moral la recherchent au contraire à Caux où ils retrouvent un piétisme subjectif et de marque protestante authentique.

Early in 1953 Monsignor Suenens, an auxiliary bishop of Malines, published a lengthy critical analysis of Moral Rearmament. His examination of the writings of the leaders of the movement led him to conclude that it is clearly a non-Catholic religious association.

The writer in *L'Actualité* quotes two further episcopal statements in which a much less censorious attitude to Moral Rearmament is expressed, and in which the possible liceity of some association of Catholics with the movement seems to be assumed. The first of these statements was issued in 1947 by Monsignor Charrière, who is bishop of Lausanne, Geneva and Fribourg, the diocese in which Caux is situated. Monsignor Charrière points to the danger that a movement like Moral Rearmament, by reason of its emphasis on the necessity and urgency of the Christian union of men of good will, might lead its members to miss out, or to ignore, some of the essential doctrines of Christianity. He adds that Moral Rearmament cannot adequately present the content of divine revelation which alone is capable of bringing salvation to all. But he concludes [1]

Au surplus, ses chefs (du Réarmement moral) s'en rendent compte, quand ils demandent eux-mêmes a leurs amis catholiques de rester ou de devenir des membres de leurs communautés paroissiales ou diocésaines dans un attachement indéfectible aux directives du Pape et des évêques. Nous ne saurions trop insister là-dessus. C'est a cette condition seulement, c'est à dire en restant pleinement eux-mêmes que les catholiques apporteront au Réarmement moral un concours vraiement efficace.

Monsignor Charrière does not say that Catholics may become members of Moral Rearmament. He does not mention the Catholic members but the ' Catholic friends ' of the movement. And we think that his statement may be interpreted as referring to the liceity of external association or passive co-operation of Catholics with Moral Rearmament. The second statement quoted at this point in *L'Actualité* is a directive issued in 1948 by the French cardinals and archbishops. In this directive it is laid down firstly, that only those Catholics, who have a deep understanding of their religion and who have priorly consulted a priest who is well-informed on the matter, may attend the meetings of Moral Rearmament. Secondly, it is stated in the

[1] Ibid., p. 20.

directive that priests and religious—and *a fortiori* seminarists—may not be associated with Moral Rearmament unless they have received authorization for this from their bishops or religious superiors. And even when they have such authorization they must not allow their presence at meetings of Moral Rearmament to be interpreted as implying any approbation in principle of the movement by the Catholic hierarchy. Once again it may be pointed out that this directive docs not state that Catholics may be members of Moral Rearmament. There is no reference to Catholic members. There is reference only to the attendance of Catholics at meetings of the movement. And, in view of the terms used, we think that this may well be interpreted as meaning merely passive attendance or presence. These two statements then, which are so frequently quoted by supporters of Moral Rearmament, do not really indicate any radical disagreement in the episcopal attitude on the question of the liceity of Catholic membership of the movement or of active participation in its religious functions. It is a well-known principle of moral theology that passive or material presence at non-Catholic religious functions may be tolerated under certain conditions.[1] The best judges of the conditions which are necessary and which suffice for such toleration are the local ecclesiastical authorities.

A QUERY ABOUT MEMBERSHIP OF ROTARY CLUBS

During the past two years I have heard considerable discussion of the merits of the Rotary Club idea. In almost every case I noticed that the advocates of Rotary were non-Catholics, many of them Americans. As a result of this quiet type of unobtrusive propaganda some of our very important and excellently organized Catholic societies have been approached with the idea of starting a Rotary Club as a subsidiary means of achieving their end. Having taken serious counsel on the matter, in conjunction with the clergy, one of these societies rejected the project absolutely ; while another approved of it and actually launched a Rotary Club, supported by considerable publicity in the Press.

In Dr. Fahey's, C.S.Sp., erudite work, *The Mystical Body of Christ in the Modern World* (3rd edition), p. 112, he informs us that the Sacred Congregation of the Consistory, on 4th February, 1929, gave as its definite decision that it was not advisable for priests to be members of Rotary or to assist at Rotary Reunions. He also states that

[1] Cf. Canon 1258, § 2.

the Spanish Hierarchy, on 23rd January, 1929, warned the faithful to be on their guard against Rotary. He further cites for us the united warning of the Catholic Hierarchy of Holland, on 12th July, 1930, which declared that Rotary is one of the associations which Catholics must avoid, because it counts on attaining its end by the application of moral principles divorced from all religion. On page 264 he quotes the forceful words of Monsignor Garcia, Bishop of Tuy, as stating that Rotary is one of the auxiliary forces of Masonry.

It is quite clear, then, that Rotary is not looked on with favour by the Catholic Church.

For the benefit of many anxious Catholics would you kindly let us know, (1) whether Catholics may become members of Rotary Clubs ? (2) whether membership is only dangerous, and, therefore, to be condemned ? (3) whether membership is absolutely forbidden, if Rotary, as Monsignor Garcia and Dr. Fahey hold, is an auxiliary force of Masonry ?

Anti-Mason.

The Rotary movement was first started in Chicago in 1905, in local clubs of businessmen. The meetings took place in rotation at the offices of the various members. Hence the name Rotary. The movement spread rapidly and widely from America through Europe. By the year 1912 it had become an international association.[1] And in recent years great efforts are apparently being made to secure its more intense diffusion. The avowed objects of Rotary are, to develop unity and understanding in various human activities and thus to foster social relations, international good will and fellowship; and to encourage service and high ethical standards in business. The ideal is service, not self: to do to others as you would have others do to you. By statute the movement is non-political and undenominational. In the Articles of Constitution adopted by Rotary International in Great Britain and Ireland we read (Art. vii, sect, i): 'Party politics and sectarian religion shall be excluded from all proceedings of the club.' It does not discriminate between the various religions: it freely accepts members from each and every religious group.

Many Catholic writers contend that there is a close affinity between the Rotary Club movement and Freemasonry. Our correspondent has referred to statements and quotations in Dr. Fahey's work, *The Mystical Body of Christ in the Modern World.* We shall return to some of these again. Father Cahill, S.J., in his work, *The Framework of a Christian State,*[2] lists International

[1] The movement is often referred to as the Rotary International.
ap. 238.

Rotary as a type of imperfect Freemasonry which is sometimes called *White Masonry.* This term [1] is applied (by non-Masonic writers) to the numerous associations which have sprung up In modern times (and still continue to multiply) ostensibly for the promotion of objects good in themselves or at least not unlawful, but which, owing to their character or practical tendencies, are utilized to promote Masonic ideals, such as secularism, indiffcrentism in religion and false internationalism.' Elsewhere[1] the same author has written of the *Rotary International* organization : 'Although its professed object is " to encourage and foster high ethical standards in business and the professions " and to make the ideal of *service* the basis of all enterprise, the code of morals which it puts forward is purely naturalistic : and in some countries, at least, Rotary has exhibited a strong anti-Christian bias.'

Reference is made in the query to the reply of the Consistorial Congregation given in February, 1929. The following question was submitted to the Congregation by a number of bishops :

An Ordinarii permittere possint clericis ut nomen dent societatibus, hodiernis temporibus constitutis, quibus titulus ' Rotary Clubs,' vel ut carumdcm saltem coetibus intersint ?

And the reply given was :

Non expedire.[1]

It is, perhaps, arguable that these words *non expedire* do not imply an absolute prohibition.[2] But the question and reply clearly show that the Rotary Clubs are under grave suspicion. Otherwise, why should the question ever have been asked : why should it have been declared undesirable or inexpedient that bishops should allow their clerics to become members of the Clubs or even to attend their meetings ? Father Cahill writes :[4] ' The *Osservatore Romano,* in an authorized article, enumerates three main reasons for the decision of the Congregation, viz. : The Masonic origin of Rotary, its proved hostility to the Church and its moral code, " which in almost every particular resembles that of Freemasonry." '

It is historically demonstrable that Rotary Clubs rendered efficacious co-operation to the persecutors of the Catholic Church in Mexico.[6] From the doctrinal standpoint it seems clear that the general Rotary movement is tinged with indifTerentism.

[1] *Freemasonry and the Anti-Christian Movement,* p. 148.
[1] *A.A.S.,* xxi, p. 42.
[1] Cf. Cahill, op. cit., p. 149, ad calc.
[4] Loc. cit.
[4] Cf. Jorio, *Th. Moralis,* u, n. 490.

We have noted that according to its statutes no distinction is to be made between the various religions. The Popes have constantly issued warnings against societies which are not subject to the influence of the Catholic religion. They should be looked on with suspicion and avoided by Catholics.[1] The presence in Rotary of an element of indifferentism has been emphasized by the Church authorities in a number of countries. Cardinal Segura, archbishop of Toledo (quoted by Dr. Fahey),[2] wrote, only about a week[3] before the reply of the Consistorial Congregation was given: 'The Rotary Club professes absolute laicity and universal religious indifference. - - - It is in appearance commercial, philanthropic, international, neutral, but always laical. Thus it hides its real mentality which denies true morality and true religion and puts in their place a morality and a religion which are not those of Jesus Christ.' The following year the Catholic Hierarchy of Holland described Rotary as attempting to attain its end 'by the application of moral principles divorced from all religion.'[4]

In the course of its history Rotary has been associated with, and has co-operated with, the Young Men's Christian Association, the Y.M.C.A.[5] This Association was expressly named by the Holy Office[6] as one of those societies which are doing great harm to Catholic youth by drawing them away from the faith under various pretexts. The Y.M.C.A. is described by the Holy Office as the parent of many other associations—the culture or religion of which is defined to be 'perfect freedom of thought, dissociated from the control of any religious creed.' The traditional faith of the members is discredited; they are led from hesitancy to universal doubt and 'are finally induced to acquiesce in a vague sort of general religion which is certainly far other than that taught by Our Lord Jesus Christ.' Later the Holy Office declares that the Y.M.C.A. 'boasts of a sincere love for youth as though it had nothing more at heart than their bodily and mental welfare. But at the same time it attacks their faith under the pretence of purifying it and of giving them a better knowledge of the true way of life "above

[1] Cf. Encyclical of Leo XIII, *Humanum Genus*—quoted by Dr. Fahey, op. cit., p. 111.
[2] Op. cit., p. 112.
[3] The Spanish Hierarchy issued their pastoral letter on 25 January, 1929; the reply of the Congregation was given on 4 February, 1929.
[4] Fahey, op. cit., p. 113.
[5] Cf. Jorio, loc. cit.
[6] Cf. Instruction given 15 November, 1920. *A.A.S.*, xii, p. 595. Cf. Bouscaren, *Canon Law Digest*, i, pp. 607-9, from whose summary and translation our extracts are mainly taken.

all churches and apart from any religious creed." [1] All who have the care of souls are asked to guard their flocks and, in particular, to warn the unwary, against the contagion of these societies. Bishops should publicly declare that the law of the Church specifically condemns the papers, periodicals and other writings of these associations which insinuate the errors of rationalism or of religious indifferentism.

This error of religious indifferentism is particularly harmful and insidious. It leads on easily to even grosser errors—to the denial of all revealed religion, to naturalism. In the Instruction of the Holy Office, quoted above, we read :[1]

In eum misere labuntur *indifferentismum religiosum* quem vocant, pluries ab Ecclesiae auctoritate damnatum, quocum cuiusvis religionis negatio coniuncta est.

And so it is that we find naturalistic elements and tendencies in the Rotary Club movement. To demonstrate the presence of these elements and tendencies, Dr. Fahey quotes[2] from the *Manual of Procedure for Rotarians,* and from pronouncements of prominent leaders of Rotary. In the quotations given the whole economy of Christianity and the supernatural is clearly ignored and a purely natural ethic is expounded. When Christ is mentioned—and He is, in one statement quoted from a Rotary leader—He is simply put on a par with Voltaire, Shakespeare, Lincoln and Confucius !

We do not wish it to be inferred that we think that the whole movement of Rotary should be pilloried simply by reason of the statements of individual members. It would be unfair to condemn any association merely by reason of the statements of a few of its members. We regard the statements of the Rotarians as the expression of an innate tendency of the movement. Our contention is that the whole background, history and constitution of Rotary point to the fact that it is fundamentally an indifferentist and naturalistic movement. We can well believe that in certain countries and in certain circumstances it has shown much more undesirable features than in others—and that some of those features are in no sense endemic to the movement. And it may even be that in some countries to-day Rotary has so modified or purged itself as to eliminate almost entirely the dangers of indifferentism and naturalism and that

[1] *A.A.S.,* xii, p. 596.

[2] Op. cit., pp. 109-10. Cf. Statement of Bishop Garcia (referred to in the query), which described Rotary as a movement in which is preached the exclusion of Christ, of His morality and of His doctrine, or in which one hears at least that abstraction is made from such, as if Jesus Christ had not clearly declared : ' He that is not with me is against me.' Cf. Fahey, op. cit., p. 264.

it is, in certain circumstances, completely divorced from Masonry and other objectionable associations. Yet, in the light of all that has been said about the general background, history and tendencies of this movement, and in view of the ecclesiastical pronouncements to which we have referred, it must be maintained that the presumption is against Rotary everywhere. It must be regarded as suspect. We would say then in reply to our correspondent's questions that Catholics may not become members of Rotary Clubs unless they have the permission of the local Ordinary to do so. Membership of Rotary may well be, often will be, dangerous. It must, we think, be presumed to be such. There is in particular, as we have indicated, the danger of indiflerentism and naturalism. But much will depend upon the particular circumstances, of which the local Ordinary is the competent judge. And to the final question : if, in fact, Rotary is anywhere found to be an auxiliary force of Masonry,[1] membership of it there will be absolutely forbidden. The words of Leo XIII to the Italian bishops are apposite here, though they were written in 1892, years before Rotary was founded. The Pope wrote :[2] 'Those societies must be avoided which not only lend their aid to Masonry but constitute a nursery therefor and a factory for the training of apprentices. All should avoid any liaison, any familiarity with persons suspected of being Freemasons or of belonging to affiliated societies . . . familiar intercourse should be cut off, not only with the openly wicked, but also with those who hide their real character under the mark of universal toleration and respect for all religions.'

MEMBERSHIP OF ROTARY CLUBS

A decree issued by the Holy Office on 20 December, 1950, was approved by the Holy Father who ordered its publication. The Sacred Congregation was asked whether it is lawful for Catholics to become members of the association which is commonly called 'Rotary Club'? It should be noted that the question asked referred to Catholics generally. The reply given was that it is not lawful for clerics to become members of the Rotary Club or to be present at meetings of the Club. The laity are to be exhorted to observe the prescription of canon 684.

[1] Cf. Jorio, loc. cit. : 'A principiis ipsarum sectarum massonicarum non videtur penitus aliena.*

•Apud Fahey, op. cit., pp. 111-12.

The reply falls into two parts. The first refers to clerics. They may not become members of Rotary, nor may they be present at its meetings—that is, according to an accepted interpretation,[1] at formal or exclusive meetings of Rotary members. This prohibition is new, but it can hardly be said to have been entirely unexpected. In 1929 the Consistorial Congregation was asked[2] whether Ordinaries might permit clerics to join Rotary Clubs or to be present at meetings of these Clubs. The Congregation replied that it was not expedient *(non expedire)* to give such permission. This reply did not contain any direct prohibition to clerics—as does the recent decree of the Holy Office. Yet, the reply of the Consistorial Congregation clearly indicated that the Rotary movement was under suspicion and was regarded as an unsuitable *milieu* for clerics. The second part of the 1950 decree refers to the laity. No direct reply is given in regard to the liceity of their becoming members of Rotary. They are to be exhorted to observe canon 684. This canon states that 'the faithful are worthy of praise if they join associations erected by, or at least commended by, the Church; that they should avoid secret, condemned, seditious or suspect associations and those which strive to withdraw themselves from the legitimate vigilance of the Church.' While, then, the decree docs not expressly state that the laity may not become members of Rotary, it is implied that Rotary Clubs fall into one of these categories of societies which the faithful should avoid. Rotary Clubs cannot be described as secret, condemned or seditious societies. But, as we have remarked earlier, they are under suspicion.

The decree of the Holy Office—especially, perhaps, in so far as it concerns the laity—has given rise to considerable discussion, and even some Catholic publicists have expressed surprise that the Church should so look askance at a movement the avowed object of which is stated to be the development of unity and understanding in various human activities, the fostering of social relations, of international goodwill and fellowship and the encouragement of service and of high ethical standards in business. But those who had closely studied the general Rotary movement could not have been surprised. In the ethical evaluation of a movement, account has to be taken not merely of the stated objective, however laudable it may be, but also of the means used to attain this objective and of the motive and philosophy which animate the movement. We

[1] Cf. *L'Osservatore Romano,* 27 January, 1951.

[2] *A.A.S.,* xxi (1929), p. 42.

had occasion, in answering a previous query, to give some indication of the history and ideology of the Rotary movement. We pointed to its close association, in some countries, with Masonry. We also referred to the essentially indifferentist nature and falsely internationalistic tendencies of the general movement. And we noted the constant warnings of the Popes of the danger for the faithful of societies which are not subject to Catholic influence. At the same time, we admitted that the Rotary Clubs were not equally objectionable everywhere and that, therefore, it was a matter for the local Ordinary to decide, in the particular local circumstances, whether membership might be allowable for the laity or whether, contrariwise, such membership might be dangerous and unlawful. We believe that our comments are still valid and, indeed, that they have gained an added validity in the light of this decree of the Holy Office. We need not cover again all the ground of our previous reply, but we may, perhaps, be permitted to direct attention to our conclusions.[1]

LAY CATHOLIC MEMBERSHIP OF ROTARY. THE HOLY OFFICE DECREE

With reference to your comments on the 1950 decree of the Holy Office concerning membership of Rotary Clubs, we feel that further discussion on one point would be appreciated.

It concerns lay membership of Rotary. In this connexion the contention is, if we interpret rightly your comments, that your earlier reply and, in particular, its conclusion, has been supported by the Holy Office decree ; that Rotary ' must be regarded as suspect ' and ' that Catholics may not become members of Rotary Clubs unless they have the permission of the local Ordinary to do so.'

This contention is based, we take it, on your interpretation of the 1950 decree and, in particular, on the statement that ' while the decree does not expressly state that the laity may not become members of Rotary, it is implied that Rotary Clubs fall into one of these categories of societies which the faithful should avoid. Rotary Clubs cannot be described as secret, condemned as seditious societies. But . . . they are under suspicion.' In other words, the decree of the Holy Office implies that Rotary, in so far as lay membership is concerned, is *in fact* everywhere a suspect society before the law of the Church.

We quite agree that the general lines of your earlier comments ' have gained an additional validity in the light of this decree, and that, in inserting the clause : ' laicos vero hortandos esse ut servent praescriptum can. 684 C.I.C.,' the Holy Office had particularly

[1] Cf. supra, pp. 66-67.

in mind the indifferentism, naturalism and general historical background of Rotary to which you referred. We are also perfectly in agreement with you in decrying the ill-informed public and newspaper criticism with which the decree was so widely greeted.

But we do feel that the ultimate conclusion of your earlier reply, however relevant to the arguments then adduced, may be questioned as an interpretation of the decree issued by the Holy Office. Looking at the matter from the point of view of the interpretation of law, we think that this conclusion, now adapted to a commentary on the decree, may justifiably be regarded as too severe. We believe that, in citing canon 684 and, in particular, its second or negative part, the Holy Office implies that Rotary Clubs *may* fall into one or more of the categories of societies to be avoided by the faithful and, indeed, in view of the history and background of Rotary, that it does in fact *in some places* constitute a suspect society. But we would not feel justified in deducing that the Holy Office regards Rotary as everywhere suspect in the sense of canon 684.

Consequently, we wonder if a correct interpretation of the decree would permit the conclusion ' that Catholics may not become members of Rotary Clubs unless they have the permission of the local Ordinary to do so '; unless, perhaps, this statement be interpreted as referring to that tacit permission which may be presumed in the absence of any local ecclesiastical declaration : which interpretation is not, after all, the obvious one of the text of your commentary.

We should like to have your opinion on the suggestion that, in so far as lay membership of Rotary is concerned, (i) the obligation imposed by the Holy Office decree is an obligation on the spiritual rulers of the faithful, namely, on the Bishops, and not directly on the faithful themselves ; (ii) unless the local Ordinary or the Bishops of a particular country either have declared in the past, or now declare, in view of this decree, that Rotary, in this particular diocese or country, is a suspect society, the faithful may in conscience be members thereof, provided, of course, the ordinary precautions are taken to guard themselves against the inherent indifferentism of the organization.

May we suggest that this conclusion is in accordance with the official interpretation of the decree published in *L'Osservatore Romano (Tlth* January, 1951) and commented on by Father Hürth, S.J., himself a Consultor of the Holy Office, in *Periodica* (xl, 15 martii 1951, pp. 111-9) ? We translate the third last paragraph of that interpretation as follows : ' It is a matter for the prudent judgment of those who have the obligation spiritually to direct the faithful, namely, the Bishops, to lay down if, in a concrete case, in their own dioceses, Rotary is to be considered a suspect association. Now it is clear that, where this suspicion exists, the Bishops must exhort Catholics to abstain from membership of Rotary. Where, on the other hand, either because of proofs given in the past or of genuine guarantees given by the leaders, the suspicion does not exist and

consequently the motive for a warning is absent, Bishops may refrain from this exhortation.'

Richardus.

We are grateful to 'Richardus' for his very interesting letter. While he expresses a large measure of agreement with our previous replies on the question of lay Catholic membership of Rotary, he challenges our interpretation of the relevant decree of the Holy Office. There seem to be between us two main points of disagreement—both of which, however, are interconnected. Firstly, 'Richardus' maintains that the 1950 decree does not imply that the Holy Office regards Rotary as everywhere suspect before the law of the Church. Secondly, 'Richardus' contends that the obligation of the Holy Office decree rests on the bishops, and not directly on the faithful; that the bishops have the onus of deciding whether Rotary is, in fact, in the particular local circumstances, to be regarded as suspect. And, as a corollary of this, he further holds that the faithful may remain, or may become, members of Rotary unless they get a contrary direction and exhortation from the local ecclesiastical authorities.

In regard to the first point, we may recall here that in our first reply[1] we had expressed the opinion that the Rotary movement, in view of its background, history and ideology, must always be regarded as suspect. In our comment on[2] the decree of the Holy Office, we claimed that this opinion was still valid and had gained added validity in the light of the decree of the Holy Office. We then referred to our earlier conclusion. We did not set down this conclusion as a formal commentary on the decree of the Holy Office. But we shall not attempt to evade responsibility on this count. 'Richardus' is well within his rights in interpreting our reference as being equivalently a commentary. We still hold to the view that Rotary Clubs must be regarded as suspect everywhere, and we still believe that this Holy Office decree can be fairly interpreted as bearing out this view.

In dealing with the question of lay Catholic membership of Rotary the Holy Office expressly referred to canon 684.[3] In

[1] Cf. supra, pp. 63-67.

[2] Cf. supra, pp. 67-69.

[3] The relevant part of the text of the decree is: 'Quaesitum est ab hac Suprema Sacra Congregatione utrum liceat Catholicis nomen dare Associationi, quae vulgo nuncupatur "Rotary Club." Emi. ac Revmi. Domini Cardinales . . . respondendum decreverunt: "Clericis non licere nomen dare Associationi "Rotary Club" vel eiusdem coetibus interessé; laicos vero hortandos esse ut servent praescriptum can. 684 C.I.C.'—*A.A.S.*, xliii, p. 91.

this canon it is stated that 'the faithful should avoid secret condemned, seditious or suspect associations and those which strive to withdraw themselves from the legitimate vigilance of the Church.' This express invocation of canon 684 implies, we hold, that, according to the mind of the Holy Office, Rotary Clubs come under one or other of the classes of societies mentioned. And while Rotary Clubs are not secret, condemned or seditious associations, they must be classed as suspect—

quae periculum creant cuiuspiam perversionis et indiflerentismi.[1]

There would be little point in the reference, in the decree, to canon 684 unless it covered the case of Rotary Clubs. The commentator in *L'Osservalore Romano*[2] writes :

Per sconsigliare i fideli dall' appartenere ad una associazionc, basta che si possa ad essa applicare una di quelle qualifiche (canon. 684) e in particolare che essa, dal punto di vista cattolico, sia da considerarsi 'sospetta.' Nel nostro caso la direttiva data del S. Ufficio appare giustificata *in lima generali* dallo spirito laico e areligioso che caratterizza il 'Rotary' anchc relativamente ai problemi per i quali il cattolico non puô prescinderc dagli insegnamenti della Chiesa cattolica. . . .

And in the article referred to by our correspondent, Father Hürth writes :[3]

At *indirecte* dicitur (in Decreto Sancti Officii) *posse* (sive in Rotary universali sive in aliqua ejus parte) notas et qualitates vel unam ex iis haberi, quae illud 'caveant' iubeant vel suadeant ad eas applicare ; immo saltem unam cx dictis notis saepius *revera* inveniri (dicamus notam minimam 'suspectae'). Absonum enim esset asserere : S. Officium in suo de Rotary Clubs Decreto dicere hortandos esse ad fidelem observationem praescripti, neque tamen censere citati canonis praescriptum tangere Rotary Clubs.

Indeed, it would be passing strange if the Holy Office did not regard Rotary Clubs as being everywhere under suspicion.[4]* In 1920 this Sacred Congregation issued an Instruction on the dangers of certain societies which led Catholics, especially the youth, into the occasions of religious indifference so often condemned by the Church.[6] We need not repeat here what we have written in our earlier replies about the spirit of naturalism and indifferentism which animates the constitution of Rotary. We have already quoted from the commentator in *L'Osservatore Romano* a sentence in which the lay and areligious character of Rotary is invoked as a general justification of the decree of the Holy Office. This commentator continues :

[1] Vermeersch-Creusen, *Epitome Juris Canonici,* i, n. 843.
[2] 27 January, 1951.
[3] *Periodica,* xl, p. 116.
[4] The prohibition against clerical membership and against the presence of clerics at Rotary meetings everywhere might be cited as evidence of that suspicion.
[6] Cf. Bouscaren, *Canon Law Digest,* i, pp. 607-9.

Questo carattcre appare évidente dall' articolo 3° dello Statuto e dal complesso dall' articolo 11°, del cosi detto Codice Etico del 'Rotary,' come pure da alcunc dichiarizioni fatte in passato da autorevoli dirigenti.

And in Father Hürth's article we read :[1]

Unum tantum moneri debet quod associationi ' Rotary ' *ex sua natura ineit ideoque nullibi ei non potest non in-esse :* certus quidam ' laicismus ' et ' indifferentismus religiosus,' vi cujus omnes religiones et confessiones practice quasi in una linea ponuntur. . . .

Our correspondent himself refers to the ' inherent indifferentism of the organization.' It seems perfectly clear to us that, if the whole movement of Rotary is thus inherently animated by a spirit of indifferentism, the Clubs which form the units of that movement must, at the least, be regarded with suspicion by all Catholics, lay and cleric. Father Oldani, writing in *Rivista del Clero Italiano,*[2] having referred to the lay and areligious programme of Rotary and to the possibility that it claims to be independent of the teaching of the Church in the sphere of morals (an independence which no Catholic can accept) concludes :

Per questi motivi la Chiesa rimane titubante e perplessa e considera da questo lato il ' Rotary ' come associazione che per un cattolico non dà piena fiducia.[3]

The very passage which our correspondent translates from the commentary in *L'Osservatore Romano* confirms the view that Rotary is suspect in the eyes of the Church, or, to use the phrase in the query, before the law of the Church. The commentator states in this passage, that it is a matter for the prudent judgment of the bishops to decide how far, in the concrete circumstances in their own dioceses, Rotary is to be regarded as a suspect association. He goes on to say that the suspicion may have been purged by proofs given in the past or by weighty guarantees. The whole passage implies that there is a presumption against Rotary and that the position *vis-à-vis* lay Catholic membership must be examined. Otherwise, there is no point in referring to a judgment by the bishops ; and why should proofs and guarantees be demanded ? Surely, the purpose of all these is to remove a suspicion, an inherent suspicion, that membership of Rotary is everywhere dangerous for Catholics !

It may be said that, in replying to his first point and, particularly, in invoking the passage quoted in the query from the commentary in *L'Osservatore Romano,* we seem to have conceded the second point to our correspondent, and to admit

[1] Loc. cit., p. 117.—Italics ours.
[2] xxii, pp. 136-40.
[3] Ibid., p. 139.

that the Holy Office decree refers directly to the bishops and not to the faithful generally. But this is not so. We confess that, in dealing with the first point of disagreement, our main concern has been to show that Rotary must be regarded as everywhere under suspicion before the law of the Church. The question as to who is to decide, in particular cases, the degree to which Rotary Clubs arc suspect, or rather the extent to which they have purged their suspicion, was incidental to our argument. It can, of course, be admitted that this decision is not within the full competence of the ordinary faithful. As Father Hürth notes :[1]

> Saepe simplices fideles hac in rc necessariam inquisitionem instituere non possunt ; ideo examen ab Ordinariis est instituendum, ex quibus dein fideles discant normam secundum quam propriam conscientiam sibi efforment.

That, however, is not at all to admit that the Holy Office decree does not directly bind the faithful. It is one thing to say that the faithful are directly bound to avoid suspect societies like Rotary ; it is another thing to say that the faithful are not always competent judges as to how far particular Rotary Clubs remain suspect in the light of certain proofs or guarantees to the contrary.

In our former replies we equivalently maintained that the decree of the Holy Office places an obligation on the faithful so that they may not become members of Rotary Clubs unless they have the sanction of the local ecclesiastical authorities. We hold fast to that opinion. We will, however, concede to our correspondent that tacit sanction or permission suffices. We make this concession mainly in deference to the commentary in *L'Osservatore Romano,* which is described as an official interpretation. In practice, then, our conclusion will correspond with that of our correspondent : the laity may become members of the Rotary Clubs in their area unless they have a contrary indication or exhortation from the local ecclesiastical authorities. That is to say, the laity may assume that membership is lawful when these authorities have decided, for the good reasons mentioned in the commentary in *L'Osservatore Romano,* that the Rotary Clubs, within their jurisdiction, are free from the suspicious elements which are inherent in the movement generally and when, therefore, they have issued no direction prohibiting membership.

We insist, however, that the lines of our approach to this practical conclusion are very different from those of our correspondent. If we rightly understand his statements and

[1] Art. cit., p. 115.

arguments, his first contention may logically be stated thus : as far as the ordinary faithful are concerned, particular Rotary Clubs are not at all suspect associations ; they only become suspect when they are expressly declared to be such by the local bishops. We submit that this contention is unsustainable. It runs counter to the attitude of the Church and of Catholic writers towards Rotary. It completely stultifies the decree of the Holy Office. If the contention be accepted, this decree would no longer have any value or meaning in relation to lay membership of Rotary. It would read thus : the faithful are to be exhorted to abstain from associations which are expressly declared by the bishops to be suspect. Our approach to the question is this : The Rotary Movement is everywhere under suspicion in the eyes of the Church. Yet local Rotary Clubs, for one reason or another, may seem to be harmless. The ordinary faithful can hardly be expected to decide finally for themselves whether all the dangerous and suspicious elements are absent. Hence they will naturally ask if the local ecclesiastical authorities have given any direction on the matter. Presumably, they can argue, a direction forbidding lay membership would have been given, and should be given, if membership was, or is, being sought by, and is dangerous for, Catholics. If, then, it is found that the bishops have made no declaration, the lay faithful may presume that they have the tacit permission of the ecclesiastical authorities to become members of the local Rotary Clubs.

At first sight all this may look like juggling with words. But we believe that our line of explanation is the correct juridical approach to the problem. It is in conformity with, and gives a value and meaning to, the decree of the Holy Office ; it squares with the commentary in *L'Osservatore Romano.* It should be recalled that the Holy Office was asked whether Catholics may become members of Rotary Clubs. In its reply the Holy Office stated that the laity were to be exhorted to observe *(ut servent)* the prescription of canon 684. This canon in turn refers to Catholics generally : they should avoid *(caveant)* certain classes of associations. Surely this canon places a direct obligation on the faithful. Briefly, then, the Holy Office decree, by its express reference to canon 684, implies that Rotary Clubs are, for the laity, suspect associations ; that, therefore, the laity may not become members of these Clubs unless and until the suspicion is allayed. The extent to which particular Rotary Clubs remain suspect or, to put it the other way round, the extent to which the inherent suspicion has been allayed, is a matter for the judgment of the local ecclesiastical authorities.

ROTARY CLUBS : THE HOLY OFFICE DECREE

We are deeply grateful for your exhaustive reply to our query concerning lay membership of Rotary Clubs. We have studied it with much interest and not inconsiderable instruction.

Our principal interest on the former occasion was to elicit what we felt would be appreciated by many, a further discussion on the practical question of whether or not, after the Holy Office Decree in December 1950, the laity might remain or might become members of a Rotary Club—and if they might, under what conditions. We are gratified to note that in your reply you have modified the severity of the earlier opinion and have reached a practical conclusion which, it seemed to us, was more in conformity with the decree itself and with the official interpretation of it in *L'Osservatore Romano.*

In coming to this conclusion, however, you have taken us to task on the lines of our juridical approach to the matter. We have studied the points of criticism which you advanced, but we still find ourselves unable to alter the position which we had adopted. For the sake of those who may be interested in the speculative aspect of the problem, and in view of your kindness in devoting such considerable space to our earlier query, may we ask if you would be good enough to permit us once again to state our views.

In the first place, we should like to make it clear that our only concern now, as it was on the former occasion, is with the interpretation of the recent decree of the Holy Office. It may seem unnecessary to make this point, but we feel that some at least of your criticisms are based upon matter which, though undoubtedly connected with Rotary, is not strictly relevant to the discussion. Bearing this in mind, let us begin with the second of the two points of disagreement. In the words of your own summary of our position, we maintained that ' the obligation of the Holy Office decree rests upon the Bishops, and not directly on the faithful ; that the Bishops have the onus of deciding whether Rotary is, in fact, in the particular local circumstances, to be regarded as suspect.' We do not at all suggest, nor could it be reasonably suggested, that the faithful have no obligation in the matter, even in virtue of this decree : but in the light of the text and immediate context, we cannot see that *the decree itself* binds them otherwise than indirectly.

The words are : ' Laicos vero *hortandos esse* ut servent praescriptum can. 684, C.I.C.' Now, to our mind, the direct and immediate obligation here imposed is contained in the phrase ' Laici hortandi sunt ' : the faithful are to be exhorted—by the Bishops, obviously —to fulfil the precept of a particular canon ; to put it in its simplest form, ' the Bishops (understood) are to exhort the laity to abide by canon 684.' How can it be said that this is a direct obligation imposed upon the faithful ?

The immediate context bears out the point. There is, surely, a very striking contrast between the phrasing which the decree employs concerning clerics and that which it used in respect of the laity : ' clericis non licere nomen dare Associationi . . . '—clearly a direct obligation imposed by the Holy Office upon all clerics ; ' laicos vero hortandos esse ut servent . . . '—clearly a direct obligation imposed upon some body *other* than the laity. We need not enter into the motives which may have urged the framers of the decree to use this opposition ; the fact is that, since they did use it, a valid legal argument may be drawn from it.

Against this contention only one argument is adduced. We respectfully submit that this argument is irrelevant. It is summed up in the following words : ' It can, of course, be admitted that this decision (as to the extent to which Rotary Clubs have purged their suspicion) is not within the full competence of the ordinary faithful. . . . That, however, is not at all to admit that the Holy Office decree does not directly bind the faithful. It is one thing to say that the faithful are directly bound to avoid suspect societies like Rotary ; it is another thing to say that the faithful are not always competent judges as to how far particular Rotary Clubs remain suspect in the light of certain proofs or guarantees to the contrary.' May we suggest that it is yet another thing to say that the faithful are *indirectly* bound by this decree of the Holy Office to avoid the particular society known as Rotary Club when, in a particular place, it is suspect here and now. The competence of the faithful to judge for themselves in these circumstances is a matter which we did not raise at all and one which appears quite irrelevant to this discussion.

Towards the end of your reply a further argument is advanced which at first sight might seem to have a bearing upon this point : ' . . . the Holy Office stated that the laity were to be exhorted to observe *(ut servent)* the prescription of canon 684. This canon in turn refers to Catholics generally : they should avoid *(caveant)* certain classes of association. Surely this canon places a direct obligation on the faithful.' Once again, we cannot convince ourselves that the point is relevant. The direct obligation imposed by canon 684 is not the direct obligation imposed by the Holy Office decree : it is a separate obligation, which pre-existed that of the decree by some thirty years.

Summing up this first consideration, then, our suggestion would run as follows. The *direct* obligation imposed by the Holy Office is on the bishops and on them alone. They, in turn, if the local circumstances demand it, must urge the laity to attend to the obligation imposed on them by canon 684, of avoiding suspect associations ; pointing out, at the same time, that in the diocese or country, e.g., Rotary Club is *in fact* a suspect association. The faithful would then be bound by a twofold obligation to avoid Rotary : *(a)* the obligation of canon 684, to which they may not have hitherto adverted (though we take it that, even before the decree, no jurist would have questioned the relevance of that canon to Rotary in general), or which they may not have been adequately competent to apply ; *(b)* the

obligation to follow the reasonable directions of their immediate ecclesiastical Superiors.

This by no means implies that the association in question becomes suspect by the fact of the express declaration of the bishops : there is, after all, a clear juridical distinction between (i) an association which is *de facto* suspect in the sense of canon 684 ; (ii) an association which is *de facto* suspect *and* authoritatively declared to be such, and (iii) an association which is suspect *because* it is declared to be such. And this introduces the second point of disagreement.

The contention which we submitted on this point now appears in your commentary under the following guise : 'As far as the ordinary faithful are concerned, particular Rotary Clubs are not at all suspect associations ; they only become such when they are expressly declared to be such by the local bishops.' We wholeheartedly agree that the contention thus stated is ' unsustainable,' and we fully endorse everything which you go on to say about it. But we submit that that is not our contention ; indeed we are quite at a loss to understand how such an opinion could possibly have been deduced from anything which was written in our letter. We stated our position as follows : ' We believe that, in citing canon 684 and, in particular, its second or negative part, the Holy Office implies that Rotary Clubs *may* fall into one or more of the categories of societies to be avoided by the faithful and, indeed, in view of the history and background of Rotary, that it does in fact *in some places* constitute a suspect society. But we would not feel justified in deducing that the Holy Office regards Rotary as everywhere suspect in the sense of canon 684 '—and this position was adopted in face of what we considered a reasonable summary of your own view, namely, that ' the recent decree of the Holy Office implies that Rotary, in so far as lay membership is concerned, is *in fact* everywhere a suspect society before the law of the Church.' We still fail to see how these statements of ours may be fairly interpreted to mean ' as far as the ordinary faithful are concerned, particular Rotary Clubs are *not at all* suspect associations.' And still more difficult is it to see the logical *nexus* between our suggestion : ' unless the local Ordinary or the bishops of a particular country either have declared in the past or now declare in view of this decree, that Rotary, in this particular diocese or country, is a suspect society, the faithful may in conscience be members thereof, provided, of course, the ordinary precautions are taken to guard themselves against the inherent indifferentism of the organization ' and the summary given in your reply : ' they only become suspect when they are expressly declared to be such by the local bishops.' Surely the point is that, if the bishops have not declared against Rotary in this diocese or country, the faithful are justified in concluding that the particular branch of Rotary existing in these local circumstances is not *de facto* suspect ; but there is nothing whatever to support the suggestion that the suspicion depends for its existence upon the declaration of the bishops.

This, we feel, is the kernel of our differences, and, in conclusion, may we submit our view on the matter as clearly as possible. We admit that *Rotary in general* must be considered suspect in the eyes of the Church : you have proved that point beyond all doubt. But we think that a distinction must be made—as Father Hürth, SJ., makes it in his commentary in *Periodica*—between Rotary in general and Rotary in this or that particular set of local circumstances. Now, in referring to canon 684, the Holy Office decree fulfils a twofold function : (a) it declares authoritatively that Rotary in general is a suspect association—this is, as it were, the speculative aspect of the decree, officially confirming the doctrine already taught by the canonists ; (b) it declares that particular Rotary Clubs *may* fall into one or more of the categories of societies to be avoided by the faithful and, indeed, as experience has taught and still teaches to-day, that they do *in fact in many places* constitute suspect societies—as Father Hürth says, in a phrase which was quoted against us—nescimus qua ratione : ' indirecte dicitur . . . saltem unam ex dictis notis saepius *revera* inveniri (dicamus notam minimam ' suspectae ') ' ; he is careful not to say ' semper revera inveniri.'

This view does ample justice to the submission, made both in *Periodica* and in your reply to our query, that it would indeed be strange to maintain that the prescription of a particular canon, which, according to the Holy Office, is to be urged upon all the faithful in connection with Rotary, has in fact no relevance to Rotary at all.

But it also takes full account of the official interpretation in the *Osservatore Romano,* in so far as this interpretation makes it quite clear that there are in fact particular local circumstances when the prescriptions of the canon need not be urged at all in connection with the Rotary of the place. In this way, it seems to us that the view which we have propounded at some length avoids a fundamental objection against the other theory—namely, if each and every particular Rotary Club is here and now a suspect association, then, in virtue of canon 684, apart altogether from this decree, the faithful may not in conscience be members of it : ' caveant ab associationibus . . . suspectis ' ; on the other hand, if the suspicion has been adequately purged in this or that particular set of local circumstances, how can it be said that the Rotary Club is, here and now, a suspect association ? After all, an association which has purged its suspicion is simply no longer a suspect association ; it *may* have been suspect in the past ; it may even, by various changes of circumstance, become suspect in the future ; but no legislation can take into account all the contingent circumstances of the future, and we take it that the Holy Office intended this legislation to be practical.

Richardus.

No one can deny that ' Richardus ' has had his say. Our first thoughts, on reading this, his second long letter, were that we should synopsize it. But it later occurred to us that a

synopsis might be unfair to his argument and that it might further leave us open to a charge of misrepresentation. Moreover, we felt that his letter, however long, would interest our readers, as it interested us. But we do not propose to answer at great length. We, too, have had our say and there is little we can add. We must refer those interested to our earlier discussion of the question at issue. We stand where we stood. And we would remind our readers that they should not be unduly impressed by our correspondent's gratified reference to our modification of the severity of an earlier opinion. The modification consisted simply in this, that we formally conceded that tacit permission, on the part of the local ecclesiastical authorities, would justify lay membership of particular Rotary Clubs. In the earlier replies we had not used any adjective to qualify the permission required. And even 'Richardus' did not suggest that the sufficiency of tacit permission was excluded by these replies. We merely stated that 'Catholics may not become members of Rotary Clubs unless they have the permission of the local Ordinary to do so.'

There are two main points in our correspondent's present letter. The first is concerned with the nature, and the incidence, of the obligation imposed by the reply of the Holy Office. The second deals with the question whether Rotary Clubs should or should not be regarded as, or presumed to be, suspect. This second point is the wider and so we propose to deal with it firstly, though this involves some inversion of the order followed by our correspondent. We hope that he will not find any evidence or suggestion of misrepresentation in this procedure.

Our contention all along has been—and still is—that Rotary is everywhere a suspect movement or association. We are not so clear as to where our correspondent would stand on this. He admits that Rotary in general is suspect in the eyes of the Church. He even states that we have proved this point beyond all doubt, and that the reply of the Holy Office authoritatively confirms that this is so. What does 'Rotary in general' mean? Does it mean the Rotary movement everywhere? If the Rotary movement is admittedly suspect by reason of its background, associations and 'inherent indifferentism'—to quote a phrase from our correspondent's earlier letter—surely particular manifestations or units of this movement, particularly Rotary Clubs, are under the shadow of that suspicion.[1] There is a presumption against them—this is the phrase which we have

[1] Cf. Father Pellegrino in *Monitor Ecclesiasticus,* 1951, fasc. ii, p. 217. 'Rotarianuni corpus "*suspectum*" a christifidelibus habendum est.

consistently used in their regard. When, then, lay members of the faithful are faced with a decision of joining a Rotary Club they must ask themselves : Is this Rotary with a difference ? Has this Club purged the suspicion under which the Rotary movement lies ? The judgment whether the necessary purge has taken place pertains to the local ecclesiastical authorities. The lay faithful will therefore, find the answers to their questions in the attitude of these authorities. If particular Rotary Clubs have not purged the suspicion, and if lay Catholics are joining them, it is the duty of the local ecclesiastical authority to issue a warning. This clearly seems to be what Father Hürth, on whom ' Richardus ' leans so heavily, had in mind when he wrote —as translated by our correspondent : ' It is a matter for the prudent judgment of those who have the obligation spiritually to direct the faithful, namely the bishops, to lay down if, in a concrete case, in their own dioceses, Rotary is to be considered a suspect association. Now it is clear that, where this suspicion exists, the bishops must exhort Catholics to abstain from membership of Rotary. Where, on the other hand, either because of proofs given in the past, or of genuine guarantees given by the leaders, the suspicion does not exist and consequently the motive for a warning is absent, bishops may refrain from this exhortation.' Father Hürth says here in effect, in our reading of him, that Rotary Clubs are presumed to be suspect everywhere. Otherwise, we ask again, why look for proofs and guarantees? Elsewhere in his article Father Hürth wrote :

> Unum tantum moneri debet quod associationi ' Rotary ' ex sua natura inest ideoque *nullibi* ei non potest non in-esse : certus quidam ' laicismus ' et ' indifferentismus religiosus.'[1] . . .

We do not deny, we have never denied, that in some places Rotary Clubs may have purged the suspicion under which they are presumed to lie. As far back as 1946 we wrote : 'It may even be that in some countries to-day Rotary has so modified or purged itself as to eliminate almost entirely the dangers of indifferentism and naturalism and that it is, in certain circumstances, completely divorced from Masonry and other objectionable associations.' But this is something to be proved. The faithful will find the proof in the attitude of the local ecclesiastical authorities.

On reading our correspondent's letter we asked ourselves

[1] *Periodica,* xl (1951), p. 117.—Italics ours. Father Pellegrino, loc. cit., p. 218, writes : ' Rotarianum sodalicium *per se* catholicis periculosum est. Quocirca, peculiaribus exceptis casibus in quibus periculum abest, ei annumerari aut eius adesse conciliis licitum profecto non est.'

over and over again: what precisely does he hold regarding particular Rotary Clubs? Does he think that they, as units of a generally suspect movement, are, at the least, to be presumed suspect everywhere, unless and until there is evidence to the contrary? Strangely, we have not been able to find in his letters clear and categoric answers to these questions. Our correspondent says that Rotary Clubs *may* be suspect (we found this phrase somewhat elusive); that, in many places, they are, *in fact,* suspect. But the general tenor of his letters seems to be that particular Rotary Clubs are not even to be presumed to be suspect everywhere. Yet he writes: 'Surely the point is that, if the bishops have not declared against Rotary in this diocese or country, the faithful are justified in concluding that the particular branch of Rotary existing in these local circumstances is not *de facto* suspect.' This seems to mean that the faithful of a particular place may conclude from the silence of their bishops that the presumption against Rotary has ceded to contrary proof. The faithful have to form a conclusion from episcopal silence. Why should this be unless there is some suspicion or some presumption of suspicion to be allayed? The faithful do not have to proceed in this way when they wish to join the local tennis club. The reason for the different procedure in the two cases is obvious in our explanation: particular Rotary Clubs are presumed suspect;[1] local tennis clubs are not. If it be, as it seems to be, our correspondent's contention that particular Rotary Clubs are not to be presumed suspect, then why raise any question of the bishop's declaration or silence in their regard? Why not join them unquestioningly as one might join the tennis club? Alternatively, if, in his view, particular Rotary Clubs, apart from a positive episcopal declaration that they are suspect, are to be put on a par with tennis clubs—is there not, despite disclaimers, considerable point and fairness in the following summary of our correspondent's contention: 'As far as the ordinary faithful are concerned, particular Rotary Clubs are not at all suspect associations; they only become suspect[2] when they are declared to be such by the local bishops.' Tennis clubs are not presumed to be suspect: the faithful are free, without qualm or question, to join them. Yet, conceivably, a particular tennis club might be declared suspect, say because it is a focus of some evil practice

[1] Is there not further evidence for this in the unconditional prohibition against clerical membership?

[2] Suspect, that is, in the sense of Canon 684—so that there is an obligation upon the faithful to avoid them.

or propaganda, and then the faithful should avoid them. They then become suspect and are to be avoided in accordance with canon 684.

Our correspondent makes considerable use of, and play with, the phrase *de facto* and its English equivalent. We have not used this phrase. It is ambiguous in the context. At the end of his present letter he writes : 'After all, an association which has purged its suspicion is simply no longer a suspect association.' Of course, this is true. We have never denied it. We have positively asserted it on several occasions. 'Richardus' misses our point. We have held that there is a presumption against Rotary Clubs everywhere—a presumption which will cede, like all presumptions, in face of contrary proof. Perhaps we may put it in another way ; considered *a priori* Rotary Clubs are presumed suspect everywhere ; considered *a posteriori* they may have given proof that this suspicion has been purged. Or again : Rotary Clubs *simpliciter* are presumed to be suspect societies ; purged Rotary Clubs are no longer suspect. In other words, something positive by way of proofs or guarantees—as Father Hürth says—must have happened to exempt the particular Rotary Clubs from the category of suspect societies. They are in fact non-suspect only if they have cut adrift from the essential tenets of Rotary ; only if, we may say in a very true sense, they have really ceased to be *Rotary* Clubs. For in Rotary, if we may quote Father Hürth again :

ex sua natura inest ideoque nullibi ei non potest non in-esse certus quidem 'laicismus' et 'indifferentismus religiosus' vi cujus omnes religiones et confessiones practice quasi in una linea ponuntur.[1]

We come now to the question of the obligation of the Holy Office decree. Our correspondent says that the decree places only an indirect obligation on the lay members of the faithful. Again we are not so sure what he means by this, or in what the indirect obligation consists. He refers to a twofold obligation—which he somehow relates to the Holy Office reply—arising for the faithful when the bishops declare particular Rotary Clubs to be *de facto* suspect : the obligation of canon 684 ; the obligation to obey the reasonable directions of their immediate ecclesiastical superiors. It may well be asked if, in the context, these two obligations are formally distinct, and how the second one is derived from the Holy Office reply. The function of the local authorities is not to create a new obligation but to point to where an existing obligation lies. The reply suggests one

[1] Loc. cit.

obligation only—that the faithful are, in accordance with canon 684, to avoid suspect societies, such as Rotary Clubs Which of the two obligations mentioned by 'Richardus' constitutes; or can either, or both of them together, constitute for the faithful the indirect obligation so dear to him? It seems to us that the text of the reply, in the interpretation of our correspondent, does not really contain any obligation at all for the lay faithful. He has to go entirely outside the terms of the question, and of the reply, to find his indirect obligation, and even then he has succeeded in finding only an obligation which is not formally distinct from that of canon 684. The Holy Office was asked: May Catholics become members of Rotary Clubs? The reply, according to our correspondent's interpretation, really ignored this question in so far as it concerned the laity. Such an interpretation, therefore, would stultify the reply. Later in his letter 'Richardus' states that the Holy Office reply, in referring to canon 684, fulfils a twofold function. We cannot follow the details of his exegesis at this point. In particular we cannot see where he finds in the reply the refinement implied in the distinction between Rotary in general, which is suspect, and particular Rotary Clubs, which may or may not be, but are in fact in many places, suspect. In any event, the twofold function mentioned at that stage is apparently something different from the twofold obligation described earlier.

It is our view that the reply indicated that Rotary Clubs are to be presumed suspect, and that the lay faithful are to observe the prescription of canon 684 in their regard. The question was asked about Rotary Clubs—not about Rotary in general. The reply urges the observance of canon 684. Our correspondent does not deny that this canon imposes a direct obligation on the faithful. He cannot deny that the Holy Office reply expressly invoked the prescription or obligation of this canon and that the purpose of the reply was to relate Rotary Clubs to the obligation contained therein. Briefly, then, the reply stated that canon 684 was to be applied to, and to be observed by, the laity in regard to Rotary Clubs. Thus the reply participates in, and reiterates, the admittedly direct obligation of the canon. In this interpretation the reply is not stultified: no part of the question asked is evaded. The Rotary movement in general is suspect: particular Rotary Clubs inevitably lie under the shadow of this suspicion: they must be presumed suspect. The decision as to whether this presumption against them has ceded to contrary proof is a matter for the competence not of the lay faithful but of the local ecclesiastical authorities

and this decision is, of course, a germane consideration for the application of canon 684 and of the Holy Office reply. Perhaps these remarks may throw some light on the form which the reply took and they may also go some way towards convincing | Richardus ' that arguments rejected by him as irrelevant were not without considerable point.

THE MORALITY OF VOTING FOR NON-CHRISTIANS

In the January, 1948 number of *Hibernia* it is stated in the editorial article *(apropos* of the general election which was held in February of that year) that ' the Catholic voter should ensure that the non-Catholic candidate whom he is supporting is at least a practising Christian and a churchgoer.' Subsequently, a reader wrote to the Editor asking if his editorial statement implied that a Catholic should not vote for a Jewish candidate. In the next (February) issue the Editor answered that question in the affirmative and then gave a peculiar defence for his reply. Would you be good enough to comment on this matter and to say if these editorials are sound?

Johnnœ.

Our correspondent has kindly enclosed copies of the two issues of *Hibernia* referred to in his query. For the convenience of our readers it may be well to indicate the defence advanced for the editorial reply in the February issue. This defence has been termed ' peculiar ' by ' Johnnie.' Briefly, the line taken by the Editor is that the basic conflict to-day is between Christianity and non-Christianity—a spiritual conflict for the souls of men. In times like the present, therefore, when Christianity is being menaced on so many sides and by so many diverse forces, national leaders should be such as to enjoy the fullest confidence of their Catholic fellow-citizens. This presupposes that these leaders give an unqualified acceptance to the Christian Faith and adherence to its practices—an acceptance and an adherence which cannot be expected from non-Christians of any creed. The Editor passes on to make some particular points regarding Jews. He contends that the Jews of to-day, irrespective of the lands in which their lives are laid, are the faithful followers of those who rejected and crucified Christ as a blasphemer and impostor. The Jews everywhere are heirs to the faith of Annas and Caiaphas.|

| In the editorial we read : ' Every Jew that has lived during the nineteen centuries that have elapsed since that sentence (of crucifixion) was carried out, every Jew alive to-day, whether he was born on the South Circular Road or in the shadow of the Wailing Wall, holds the faith of Ananias and Caiphas [sic] on this matter. If they did not they would not be Jews.'

Moreover, it is argued that since, in the twenty-six county area of Ireland, there are less than four thousand Jews out of a total population of nearly three million, there is no unfair discrimination in the suggestion that Catholics should not vote for a Jewish candidate.

Speaking generally, the fundamental argument of the editorial defence seems to us to be perfectly sound. It is an agreed principle of theological and sociological teaching that Catholic citizens should not vote for leaders who are inimical to Christianity. This is not bigotry or unfair discrimination. There is no undue interference with the candidate's individual life. He is fully free to enjoy the benefits of ordinary or private citizenship. There is simply an unwillingness to set up, in a position of trust, one who is an enemy of the Christian way of life. To act otherwise would prejudice the common good, for we are assured, upon the highest authority, that the acceptance of Christianity, in public and in private life, is essential to the true welfare of men and society. Pope Pius XI wrote :[1] 'Only when men recognize both in private and in public life that Christ is King will society at last receive the great blessings of real liberty, well-ordered discipline, peace and harmony.' Pope Pius XII echoed these words of his predecessor in his first encyclical, in which we read :[2] 'The only means by which men can be brought back into the way of salvation are reverence for Christ on His royal throne, recognition of His kingly rights, and the restoration both of the individual and of society to the obedience which they owe to the law of Christian truth and charity.' Citizens who, in a democratic regime, knowingly vote for those who are inimical to religion and liberty must share, in some degree, the responsibility for any subsequent persecution and injury to the common good. Many theologians make those points strongly. Noldin, for instance, stresses the obligation to vote for a suitable candidate and notes that unsuitability can arise from two principal sources :

> Candidatus dici debet ineptus, tum si ex defectu scientiae, prudentiae vel experientiae impar est officio suo, tum praesertim si est infensus religioni catholicae. Quare ut vere idoneus haberi possit, vir catholicus esse debet, qui non solum ingenii et prudentiae laude claret, sed etiam secundum principia catholica munere suo fungitur.[3]

[1] Encyclical *Quas Primas*—Encyclicals of Pius XI (Ryan), p. 142.

[2] *Summi Pontificatus,* English translation, C.T.S. (London), p. 10.

[3] Noldin, *De Praeceptis,* n. 323. Cf. Cahill, *The Framework of a Christian State,* who lays down the following principle regarding democratic government : 'It is essential that the deputies be well instructed in Christian social principles,' p. 480.

It is, however, held to be lawful to vote for an unworthy candidate in certain circumstances—for instance, if this is necessary to exclude an even more unsuitable one, or if failure to vote for a particular candidate would involve disproportionate personal loss, or if there is good hope, all things considered, that the election of this candidate may ultimately conduce to the common good.[1]

In closely linking up all the Jews of the present day with their forbears who rejected and persecuted Christ, the editorial seems unduly harsh. No allowance is made for the possibility that individual Jews may not be inimical to Christian principles. It is easy to say that if they are not they would not be Jews. The issue is never so simple as that. It is not easy to estimate particular difficulties, or to set limits to the bounds of good faith. Must we take it that all Jews everywhere are pledged to struggle for the rejection of Christ and Christian principles? Consider, for instance, the particular circumstances of our own country—and it must be remembered that these are the circumstances relevant to this whole discussion. Our elected representatives and legislators must act within the framework of our Constitution in which the divinity of Christ as well as a number of fundamental Christian social principles are clearly asserted.[2] Any candidate who accepts that Constitution and undertakes to legislate within its framework cannot, in all fairness, be labelled, for any *a priori* reasons, as an enemy of Christianity. Moreover, particular non-Christian candidates may be known, from the record of their public life in the past, not merely not to be antagonistic to Christian principles, but to have laboured for their actual implementation. We mention all this to indicate that it may be very unfair, in a matter of this kind, to generalize too freely, on *a priori* grounds, without consideration of the particular and individual circumstances.

We think, too, that the invocation of the vast numerical preponderance of Christians over Jews in this country is really beside the point of the discussion. If, for the reasons mentioned earlier by the editor of *Hibernia,* it were wrong to cast a Catholic

[1] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 90: 'It is sinful to vote for the enemies of religion and liberty, except to exclude a worse candidate, or unless compelled by fear of great personal harm, relatively greater than the public harm at stake.' Cf. Priimmer, *Th. Mor.,* ii, n. 105: 'Merito quis vocavit incuriam et vanum timorem eorum civium qui suffragium non dant pro bonis deputatis *peccatum electorate.* Quod quidem peccatum non videtur esse levioris pondens.'

[2] Cf. Preamble to the Constitution of Ireland, 1937, also Articles 40—43, and 45.

vote in favour of a Jewish candidate, it would remain wrong to vote for this candidate even if Jews formed a much higher percentage of the population. Indeed, in this latter hypothesis, it can be said that it would be more unlawful to vote for a Jew—because the more numerous the non-Christians are, the greater would be the danger of wider non-Christian leadership, and the greater the need of Christian solidarity.

To sum up then: we agree that normally Catholics should not vote for non-Christian candidates. But if it is clear, when account is taken of the circumstances of person and place, that a particular non-Christian candidate is willing to act in accordance with Christian principles, we think that it is not unlawful to vote for him, irrespective of the very small minority of his co-religionists.

EMPLOYMENT OF REMARRIED DIVORCEES

Is it right for Catholic institutions to employ Catholics or non-Catholics who are not merely divorced, but who have married again while the first partner is still living?

Exile of Erin.

It is an accepted principle of Christian teaching that we must tolerate the erring[1] and we may not exclude them from the ambit of the charity we owe to all men.[2] Moreover, all human beings have certain fundamental rights—among which is the right to a fair chance of employment and of thus securing an honest and decent livelihood. On the other hand, an obligation is laid upon us all to detest sin and to avoid contact with sinners, insofar as that contact may be a source of danger to ourselves, of scandal to others, or might be interpreted as an approval of sin. From all this it follows that it is not possible to give a categoric answer to our correspondent's question. The answer in any particular case will be conditioned by the specific circumstances, in the light of which the foregoing factors must be estimated and balanced. There will be circumstances in which the employment of a divorced and remarried person will cause no scandal and will not suggest any approval of sin.

[1] The statement of St. Thomas (*S.T.* 2, 2, q. 60, a. 11) on a wider issue is in point: 'Humanum regimen derivatur a divino regimine et ipsum debet imitari. Deus autem, quamvis sit omnipotens et summe bonus, permittit tamen aliqua mala fieri in universo, quae prohibere posset: ne iis sublatis maiora bona tollerentur vel etiam ne aliqua mala peiora incurrantur'

[2] Cf. St. Th., *S.T.*, 2, 2, q. 25, a. 8.

Indeed, there may be circumstances where the employment of a necessitous divorcee would be a high form of charity. But there will be other cases in which the employment by Catholic institutions of divorced and remarried persons might cause grave scandal and offence—especially if other worthy employees are available. In all this matter, however, we must be on our guard against pharisaic scandal. And, at the same time, we must be careful to avoid showing any special recognition or preference for those who have outlawed the moral code. Charity does not demand this preference. In fact, it forbids it as a source of scandal and an approval of sin. Circumstances will vary greatly from country to country and, perhaps, even from place to place in any one country. It is a sad fact, but one of which account must be taken, that many outside the Catholic Church, especially in countries like America and England in which divorce is so common, are unaware that, in being divorced and remarrying, they are doing anything immoral. Such ignorance is deplorable, but not always culpable. Catholics can hardly be unaware of the immorality of divorce and the nullity of a subsequent marriage while the former partner is living. This suggests that there would be greater danger of scandal and approval of sin in the employment, particularly in Catholic surroundings, of a divorced and remarried Catholic.

SECTION III

THIRD COMMANDMENT

THE HEARING OF MASS

Some time ago, during a theological discussion, one of the priests present declared that only venial sin was committed by absenting oneself until the end of the psalm *Lavabo* during a Mass of obligation. He asserted that the theologians held it was not a grave sin to present oneself a little before the Offertory, and some liturgical writers considered the Offertory as ending only with the words *Orate Fratres.*

Needless to say, the others present were astonished at hearing an opinion so much more liberal than the common one, and began an investigation of the theological authorities.

St. Alphonsus, in his *Instructions on the Commandments,* says : 'According to some theologians, one who is present from the *beginning* of the Offertory is not guilty of mortal sin. However, the more common and more probable opinion is that it is a grievous sin to be absent until the end of the first Gospel.' Again, in his larger Moral Theology, citing Busenbaum, S.J., for a similar opinion, St. Alphonsus states that there were, in his time, three views as to *grave matter* : (a) According to Toletus, Bonacina, Navarrus, etc., it is a grievous sin to be absent from the beginning of Mass until the end of the Epistle. (6) According to Soto, Dicastillo, etc., it is grievous to be absent until the end of the Gospel. St. Alphonsus considers this the more probable opinion, (c) According to Lugo and others the extreme limit of *light matter* is the end of the Gospel (or Creed) ; or as Viva, St. Alphonsus, etc., express it : 'up to the Offertory.' Although theologians like Elbel, Herinckx and Paulus, etc., hesitated to consider this opinion probable, St. Alphonsus insisted on its claim to the title. But, apparently, not a single one of the older theologians admitted absence beyond the end of the Gospel (or Creed) as free from mortal sin.

And now, turning to more modem authors one finds the same opinion : that the extreme limit of *parva materia* is the end of the Gospel (or Creed). This is maintained by Sabetti-Barrett, S.J., Lemhkuhl, S.J., Marc, C.SS.R., Wouters, C.SS.R., Aertnys, C.SS.R., Ballerini-Palmieri, S.J., Ferreres, S.J., D'Annibale, Bucceroni, S.J.

Certain other authors use language which might seem ambiguous ; but since they cite the great theologians as agreeing with them their words must be so interpreted. Thus Prümmer, O.P. : ' It is venial to omit all up to the Offertory exclusive ; mortal to omit all up to the Offertory inclusive. Citing the authority of St. Alphonsus, Ubach, S.J., uses the same words and cites his view as the common opinion ; similarly Noldin, S.J.

The only authority cited by the priest who advocated this new opinion on the hearing of Mass was that of Father Davis, S.J.: 'Mass will not be heard substantially if one omits all up to the Offertory, inclusive, the Offertory being concluded at *Orate Fratres.* Now, Father Davis claims in his text to give 'the common opinion of divines,' the 'generally accepted opinion' with regard to the hearing of Mass; but since he cites no authorities and gives no argument in support of his very liberal view, it seems clear that he has misunderstood the expression *ante Offertorium* as employed by all moral theologians. Otherwise he would hardly have supported an opinion so far beyond what the common—nay, the universal—opinion of theologians will allow, while at the same time professing to follow them.

However, it is likely that some important points have escaped my notice, and so I should be very grateful for your answer to the question whether the liberal opinion of my clerical confrère can be considered 'probable' and so safely followed in the pulpit and confessional.

Perplexed.

We congratulate our correspondent on the pains he has taken to throw light upon the subject of his query. We have consulted many additional writers on the subject. We quote from some—though it is hardly necessary to reinforce the formidable array of authorities already marshalled. We do so principally to illustrate the terminology echoed by Father Davis.

We should perhaps begin by recalling that all the theologians state that a notable omission of the parts of a Mass of obligation is grave matter. An omission may be notable *qualitative*—that is by reason of the important nature of the part omitted; or it may be notable *quantitative*—that is by reason of the extent of the omission in relation to the whole. Writers generally say that, on this second basis, the omission of a third of Mass would be grave. It is clear, however, that theologians were not entirely content to assess omissions on a purely time basis. Lacroix is interesting on this point. He remarks that in estimating what is a third of Mass:

partes non debent considerari secundum diurnitatem sed maxime secundum dignitatem.[1]

He cites several views as to what constitutes grave matter on this basis. The most liberal of those views is that which declares that the omission is not grave if one arrives immediately after the Gospel and remains to the end of St. John's Gospel, or even if the Credo also is omitted

dummodo venias ante Offertorium quia oliin ibi incipiebat missa.

[1] *Theologia Moralis,* n. 665.

Lacroix himself, however, prefers a stricter view, and would regard one who is not present from the beginning of the Gospel, and does not remain to the end of Mass, as guilty of a grave omission. He quotes Mendo as saying : *Who would say that a person hears Mass on Palm Sunday if he arrives after the Passion has been read as the Gospel ? ' Billuart briefly sums up the teaching thus :

Qui peracto Evangelio accederet ad Missam, secundum communem sententiam peccaret mortaliter.[1]

Many theologians make the less precise statement that to omit from the beginning of Mass to the Offertory inclusive is grave. They make it clear in the context, however, that they regard the end of the Gospel or Credo as the ultimate limit for light matter. So Ballerini, who gives this view but prefers the stricter view favoured by Lacroix, Billuart and St. Alphonsus.[§] Kônigs says :

grave est omittere omnia usque ad Offertorium inclusive—seu ad oblationem panis exclusive.'

Slater[4] and Bucceroni[5] use almost identical language, stating that it is extremely grave to omit all of Mass from the beginning to the Offertory inclusive, but that omission to the end of the Gospel is probably light. Vermeersch® stated the same opinion negatively :

Non est certo grave omittere missam catechumenorum, seu omnia ad Offertorium exclusive—saltem si tunc audiatur Evangelium.

In Sabetti-Barrett[7] we find a very precise indication of the limit of light matter :

Excusari potest a mortali qui praesens fit missae dum sacerdos salutat populum antequam legat versiculum illum qui antea vocabatur Antiphona et nunc dicitur Offertorium. Ratio est quia quae procedunt non pertinent ad sacrificium sed sunt velut praeparatoria ad illud.

Merkelbach,[§] one of the more recent writers on Moral Theology, gives the following :

Gravis censetur omissio eorum quae habentur ab initio usque ad Offertorium inclusive. E contra, saltem probabiliter, omissio eorum quae praecedunt Offertorium, quia non sunt nisi missa catechumenorum.

[1] *Cursus Theologiae,* t. vii. dis. 6, a. 5.
[•] Ed. vii., *Th. Moralis* i, n. 342.
[•] TA. *Moralis Compendium,* p. 181.
[•] *Principia Th. Moralis,* p. 245.
[6] *Institutiones Th. Moralis,* i, n. 642.
[•] *Th. Moralis Principia,* ii, n. 463.
[7] *Compendium Th. Moralis,* n. 242.
[•] *Summa Th. Moralis,* ii, n. 700.

There is no point in further multiplying quotations. The teaching is almost monotonously uniform. There is grave sin if one is absent from a Mass of obligation beyond the end of the Gospel or Credo. This is the most liberal view advanced. Many theologians prefer a stricter view. This is particularly true of the earlier theologians—a fact which indicates a historical development of casuistry in relation to the precept of hearing Mass. A brief glance at this history may therefore be interesting.

From the early centuries there is abundant evidence that there existed a general custom of attending the liturgical gatherings on Sundays. In the course of time this custom begot an obligation which was duly expressed in ecclesiastical legislation. From time to time we find that various Councils insisted upon the obligation of being present at the whole of Mass. And we have civil laws reiterating this obligation under threat of temporal penalties. After the thirteenth century the object of the obligation was more closely examined. For some time it was maintained that the faithful were bound, not merely to attend Mass on Sunday, but to attend the solemn parochial Mass and sermon. Gradually, however, this latter part of the obligation disappeared. In the early years of the fifteenth century St. Antoninus of Florence[1] declared that what was of strict obligation was duly attentive assistance at the Mass itself. There was no strict obligation to be present at the sermon. The obligation was fulfilled even if a small part of the Mass itself were omitted—but not if a notable part were omitted. A half or a third would be a notable part.

Subsequent theologians defined more precisely the teaching of St. Antoninus. Dominic Soto[2] declared that to omit from the beginning of Mass to the Epistle was not grave and did not prevent the fulfilling of the precept, because one could still do everything demanded by the canon of the Apostles—quoted in the Decree of Gratian. This canon reads :

> Omnes fideles conveniant in solemnitatibus sacris ad ecclesiam, et scripturas apostolorum et evangelium audiant.[3]

Soto says that, while this decree need not be interpreted too strictly, it would not be safe doctrine to teach that the Gospel could be omitted. Navarrus taught that the omission of the beginning of Mass up to the Epistle and Gradual inclusive was grave—but he thought that smaller omissions of those parts

[1] *Summa Thiol.*, p. ii, t. ix., ex.
[3] *In iu Sent.*, l. iv., d. xiii, q. 2.
*Cf. *P.L.*, 187, 1727.

could be compensated for by privately reading them or by hearing them read after Mass. Suarez[1] rejects this method of compensation, because it could not be regarded as part of Mass. But Suarez considered that the omission of the first Gospel could be compensated for by remaining for the last Gospel, which was optional. The decrees demanded assistance only until the priest's blessing. This view of Suarez seems to have prepared the way for the acceptance as probable of the opinion which regards the parts of Mass which precede the Offertory as not constituting grave matter. Subsequent theologians cite Suarez's opinion. They regard it as probable, though many of them prefer the stricter opinion, which they describe as the common teaching, and from which they are loath to depart. Such is the position adopted by Bonacina, Laymann, Sporer, Cardinal Lugo, the Salmanticenses, and St. Alphonsus.

Modern theologians commonly accept the more liberal opinion introduced by Suarez. A twofold consideration seems to have influenced this development. Firstly, the reading of a second Gospel as part of Mass—not merely privately—was regarded as adequately supplying for the omission of the first Gospel. And secondly, it was realized that, as the sacrifice proper, the Mass of the faithful, began only when the Gospel (and Credo) were concluded, this point was a very natural point of demarcation between what was a light and a grave omission.[2] This consideration serves to emphasize what is abundantly clear from the context in the writings of the theologians, that when they speak of omission up to the Offertory inclusive, they had in mind the antiphon which marks the opening of the Mass of the faithful. This, too, we understand, is what the liturgist means when he uses the word 'Offertory'—*sine addito.*

Father Davis[3] says that Mass will not be heard substantially if all its parts up to the Offertory inclusive are omitted. And, of course, this is perfectly true. The statement thus far only repeats the universal opinion of theologians—as it repeats the very language used by many of them. It is the subsequent remark: 'the Offertory being concluded at the *Orate Fraires,*' which causes the trouble. If Father Davis means by the complete statement that there is grave omission only when all up to the *Orate Fratres* is omitted, then he is not giving the common

[1] *De Eucharistia,* disp. 87, s. 2.
[2] Cf. Gury-Ballerini, loc. cit.
[3] *Moral and Pastoral Theology,* ii, p. 61 (third edition).

opinion of divines. We have not found a single theologian who would regard that opinion as even probable, and we venture to think, in the light of the history of the question, that there is none who does so. The opinion, then, is as far as possible from being 'generally accepted.' In our view it is not even acceptable. It is just possible, however, that Father Davis does not mean that there is a grave omission *only* when all of Mass up to the *Orates Fraires* is omitted. He does not expressly state this—though, indeed, it would have been very easy for him to do so unambiguously had he wished. He only says expressly that omission to the *Orate Fratres* is grave. But his statement can be interpreted to express the liberal view attributed to him by our correspondent's confrère. And it may be that he does really intend to sponsor this liberal view. But that he should sponsor it—if he does—as the common view seems incomprehensible unless, as is suggested in the query, he misunderstood what moral theologians mean and have meant by *ad Offertorium inclusive.*

Has this liberal view intrinsic or extrinsic probability? It is not easy to decide, on intrinsic reasons, what exact amount would constitute gravity in regard to the obligation in question. But it has been reasonably maintained that, in relation to the whole, omission from the beginning of Mass to the end of the Gospel or Credo is substantial or notable and, therefore grave. And it seems very reasonable, too, to place the dividing line between grave and lighter matter where there is also a natural division—that is at the end of the Mass of the Catechumens. Father Davis advances no intrinsic reasons for a more liberal standard. All the extrinsic authority is against the liberal view attributed to Father Davis. The fact that one solitary theologian sponsors an opinion does not make that opinion solidly probable. Father Davis would readily admit that statement. It remains true of an individual opinion even when there is not a strong contrary opinion. How much more true is it when one theologian sponsors an opinion which is rejected universally by others? We cannot, therefore, consider the advanced liberal view attributed to Father Davis as 'probable,' nor do we think that it can be safely followed in the pulpit or in the confessional.[1]

[1] In the more recent editions of his work, Fr. Davis has cleared up any possible misunderstanding of his view. He writes, op. cit. p. 61: "It is a grievous sin . . . to omit all up to the prayer of the Offertory of the Mass."

DOES CUSTOM IN IRELAND ALLOW THE SAVING OF HAY ON SUNDAY?

Your views on the following passage taken from an article on 'Sunday Repose,' which appeared some time ago in a popular Catholic monthly bulletin, will be appreciated. The passage is :

'In Ireland one kind of work requires no excusing cause : custom allows the saving of hay. The farmer need not first forecast Monday's weather ; without observing the winds or considering the clouds, he may take his scythe and mow.'

An Old-Time Divine.

We freely concede the paramount importance of custom in interpreting the law which prohibits servile work on Sunday. But we cannot accept the teaching contained in the first sentence of the passage quoted, because we must deny the fact on which the conclusion is based. We deny the existence in Ireland of any general custom which would allow, without more ado, the saving of hay on Sundays. There is no such custom in the parts of the country with which we are familiar. We have made inquiries regarding some other widely-separated parts and the replies have invariably corresponded with our own experience elsewhere. The general position seems to be that, while excusation from the law prohibiting servile work is commonly presumed [1] in order to save hay in a period of bad or broken weather —or in some such circumstances of stress—there is no such thing as an established custom which automatically allows this work apart from the consideration of an excusing cause—like these mentioned. In other words, it is the question of excusation that arises in every place covered by our inquiries. Needless to say, they have not covered every area. But, combined with our personal knowledge, they have been wide enough to warrant our saying, beyond yea or nay, that there is no general or even widespread custom in existence such as is suggested to exist by the writer of the passage quoted. We must assume that this writer has some particular area in mind where the custom referred to prevails. But the conditions, whatever they may be, of a *particular* place in Ireland could not justify his contention that custom in this country allows the saving of hay on Sundays.

[1] In many places it is customary for the priests to announce from the altar or pulpit on a fine Sunday that, by reason of continued broken weather and the consequent difficulty of saving hay or corn crops, the faithful are allowed to save them on that day. We commend this procedure. The priests merely declare the existence of an excusing cause. Indirectly, their doing so emphasizes the existence of the law and its binding force in normal circumstances.

Moreover, it is suggested, in the passage quoted, that custom allows not merely the saving of hay, but also the cutting or mowing of hay on Sundays. Here again, and *a fortiori* so to speak, we deny the existence of the custom. So far as we know even excusation from the law is *normally* regarded as extending only to the *saving* of hay already mown and which, by reason of the vagaries of the weather, or some such reason, is being found difficult to save. In this context the cutting of hay would, as a rule, be considered very different from the saving of hay already cut. And this is very natural, because the necessary postponement of the former will not usually entail loss or injury to the crop, while postponement of the saving in broken weather will mean difficulty and deterioration—greater or less according to the length of time involved. We would, however, agree with the author of the quotation when he says that the farmer, before deciding that he may save his hay on Sunday, need not forecast Monday's weather. In our way of looking at the matter, and, we think, the common-sense way, it is the weather of the preceding days (regarding which, incidentally, the farmer is certain), rather than that of the subsequent days (which can only be conjectured) that will decide the issue. Thus, if there has been a period of broken weather, but Saturday and Sunday are so fine that a farmer can make his hay safe at last by working on this latter day, before allowing him to do so we should not require that he form a prudent judgment that the weather will again be broken on Monday.

Arising out of our correspondent's question, we may be permitted a few general remarks. During World War II, and since, there has become observable a tendency to encroach more and more upon the Sunday rest. It is true, indeed, that the encroachment was to a large extent unavoidable, and so excusable, owing to the exigencies of war and war conditions. But we should not allow ourselves to be deluded into thinking that what was excusable and justifiable in this matter, in abnormal circumstances, is, or should remain, the rule when the world has reverted to some degree of normality. In other words, every endeavour should be made, and as soon as possible, to bring the faithful back to the full and traditional observance of the law of Sunday rest.

IS 'RABBITING' PROHIBITED ON SUNDAY?

The practice of 'rabbiting' on Sunday is very common in nearly all rural districts in Ireland. Few engage in this pursuit as a means of livelihood, but the earnings from it can be quite substantial even if only occasional.

Should it be regarded as a servile work and hence as a violation of the law of Sunday rest?

Occidentalis.

In posing a specific question our correspondent's letter raises the wider issue of the exact nature of servile work. There is, among the moralists, a measure of disagreement on that issue. We have no official or authentic definition of the term servile work. The law simply prescribes abstention from such work—among other kinds—as part of the due observance of Sundays and holydays of obligation.

Festis de praecepto diebus Missa audienda est et abstinendum ab operibus servilibus. - - -[1]

In the absence of an authentic definition of a legal term we must, in seeking the true meaning of this term, have recourse primarily to customary interpretation which, of course, in this context, will fundamentally be a reflex of the common estimation of men in explanation of their manner of acting. We should, therefore, naturally expect that this common estimation would be frequently invoked in a discussion on servile work. Yet, in fact, this is not so, at least in the discussions given by very many of the recognized authors. They have mainly relied rigidly on an objective criterion—the *finis operis*.

It is, indeed, particularly fitting that, in the quest for the meaning of the term servile work, we should resort firstly to custom and common estimation. We are assured authoritatively, in the Code of Canon Law, that custom is the best interpreter of laws. This general principle of interpretation has surely a very special validity when the law under examination originated in custom. The law prohibiting servile work on Sundays originated in this way—

non ex vi praecepti legis (Veteris Testamenti) sed ex constitutione Ecclesiae et ex consuetudine populi Christiani.'[2]

In the first centuries of Christianity the term servile work was not used in relation to the Sunday observance.[3] But the faithful felt that it was fitting to abstain on the Lord's Day from any

[1] Canon 1248.
[2] St. Thomas, 5. T., 2-2, 122, 4 ad 4.
[3] Cf. Noldin, *De Praeceptis,* n. 266; Villicn, *Histoire des Commandements de l'Église,* p. 97.

work which might impede the due fulfilment of the obligation of religious worship. Out of this original voluntary and almost instinctive abstention the custom of the Sunday rest grew and developed and later found expression in positive law.[1] It was only about the sixth century, and due probably to some judaizing influence, that the obligation of the Sunday rest came to be cquiparated generally with the law of the Sabbath observance formulated in the Book of Leviticus xxiii, 7 : ' You shall do no servile work therein.' Thus, and thenceforth, the term servile work found a place in Christian theology.

Through the subsequent centuries various attempts were made by the writers accurately to define, or to describe the denotation of, this term. The most commonly accepted description to-day is to say that servile work is that which is done principally by bodily labour, is intended immediately for the utility of the body, and is the kind of work which was done by slaves (hence the adjective servile) in times past. Thus Prümmer :[2]

Opera servilia sunt illa quae (a) potissimum labore corporali perficiuntur. *(b)* ordinantur immediate ad utilitatem corporis, (c) antiquitus a servis fieri solebant.

Servile works are contrasted with liberal works which are the product mainly of mental activity, are done for mental occupation or development, and were, in former times, the proper activity of free men. But this apparent dichotomy did not exhaust the categories of human activities. The writers[3] mention a third class of works, *opera communia,* which are the product of a fairly even combination of mental and bodily labour, which serve the needs of both the mind and body, and which in the past were done by both free men and serfs. Following on these descriptions, very many of the writers insist that to decide whether or not a work is servile we must look solely to the objective nature of the work—the *finis operis*—and we must prescind entirely from the *finis operantis*—the purpose for which the work is done. In this view, then, it makes no difference whether the work is engaged in for pay as the usual means of winning a livelihood or is done as a recreational occupation. This is represented as the traditional teaching.

Yet there are manv dissentient voices in ancient, medieval and modern times. InducJ, Cajetan[4] seems to have been the

[1] Cf. Mahoney, *Questions and Answers II,* q. 467.

[2] *Manuale Th. Mor.,* ii, n. 488.

[3] A few writers think that a category of common works is inadmissible (cf. Mcrkclbach, *Th. Mor.,* ii, n. 686), or useless (cf. Gcnicot, *Th. Mor.,* i. n. 333).

[4] *In S. T., 2-2,* 122.

first to insist that the only relevant factor for deciding the servile or liberal nature of a work was the *finis operis.* This teaching was accepted by Suarez and the Salmanticenses, by Busenbaum and his commentators Lacroix and St. Alphonsus. These latter writers exercised a great influence on moral theology and it is not surprising, perhaps, to find their view on servile work accepted in the vast majority of modern manuals. But, as we have noted, the original concept of the work prohibited on the Lord's Day was that of an occupation which interfered with the fulfilment of obligation of divine worship.[1] St. Thomas, in the course of an analysis of servile work, writes :

> Opus servile dicitur a servitute : est autem triplex servitus : una quidem qua homo servit peccato - - - et secundum hoc omne opus peccati dicitur servile : alia vero servitus est qua homo servit homini : est autem homo alterius servus non secundum mentem sed secundum corpus - - - et ideo secundum hoc opera servilia dicuntur opera corporalia in quibus unus homo alteri servit.

The theologians of the thirteenth, fourteenth and fifteenth centuries regarded the purpose for which the work was undertaken as a most important consideration in deciding whether or not it was servile and forbidden.[2] In their view the daily toil on which a worker was engaged in order to earn a livelihood was the kind of work which was prohibited on Sunday. It was this which would prevent the fulfilment of his religious duties. Pope Benedict XIV considered that the *finis operantis* was a relevant factor in deciding whether certain kinds of work were servile.[3] Pope Leo XIII echoed the original concept of the work prohibited on Sunday when he wrote :[4] 'Rest, combined with religious observances, disposes man to forget for a while the business of everyday life, to turn his thoughts to things heavenly and to the worship which he so strictly owes to the Eternal Godhead. It is this, above all, which is the reason and the motive of the Sunday rest.'

In particular, for the last thirty years or so, there has been a growing volume of opinion which advocates a break from the criterion of servile work initiated by Cajetan and more or less crystallized in the standard textbooks. This opinion has been convincingly and eloquently expounded in various periodical articles. The writers have pleaded for a reversion to the position in which the *communis aestimatio hominum,* which takes account

[1] Cf. *Diet, de Thiol. Cath.,* sub v. Dimanche cc. 1312 et scq.
[2] Cf. Berte, 'A Propos des Oeuvres Serviles ' in *Nouvelle Rev. Thiol.* (1936) pp. 38-39, 54-55.
[3] *De Syn. Dioec.,* xiii, p. 18, n. 2.
[4] Encycl. *Rerum Novarum,* p. 37 (English translation by C.T.S., London).

of the *finis operantis,* shall he allowed to play its part in diagnosing servile work. Some of the standard authors have begun to waver. In a recent edition of Noldin we read :[1]

Itaque si in sequentibus retinemus descriptionem operis servilis, prout hucusque in usu erat, hoc fit solum quia alia descriptio magis apta nondum invaluit ; sed optandum est ut invaleat.

And it is of interest to note that even those authors who cling steadfastly to the criterion of Cajetan feel constrained, in order to reach a decision in certain cases, to call in the *finis operantis.* They do so particularly, of course, when there is some doubt as to the objective nature of the work or when there is question of *opera communia.*

Aside from the fact that a description which must invoke the distinction between serfs and freemen is somewhat dated, it seems to us that the history of this question of the Sunday rest clearly demands, in an analysis of the kind of work prohibited, that account be taken of the common estimation of men. It seems to us further that, in this common estimation, the kind of work which is generally prohibited on Sundays and holydays is the daily toil or occupation which is engaged upon as a means of livelihood. It is this toil which, to use the terminology of St. Thomas, constitutes the ' servitude ' of man to his fellow-men and which normally inhibits or endangers that freedom and rest which are necessary for the due exercise of divine worship. Noldin writes :[2]

De facto in ipsa natura laboris, etiam corporalis et gravis, nil invenitur indecens coram Deo ; sed invenitur maximum impedimentum cultus Dei et animae in eo quod homines, sicut antiquitus servi, coguntur ab aliis vel a propria cupiditate lucri laborem per hebdomadam exercitum etiam die dominica continuare cum iactura libertatis pro cultu Dei et animae.

In the light of all this we would say, in reply to our correspondent's specific question, that ' rabbiting ' indulged in as a recreation or pastime, though it may be profitable, should not be considered as legally servile and prohibited on Sundays and holydays. If ' rabbiting ' takes the form of hunting, many of the writers would describe it as an *opus commune.* And it is widely accepted that *opera communia* are not prohibited even though they involve considerable bodily fatigue. When such works are done as a recreation, however profitable, there is an added reason for placing them in the non-prohibited class.

[1] Loc. cit. ; cf. Slater, *Moral Theol.,* p. 174 : ' In determining what is servile work, and therefore forbidden, we must consider not only the nature of the work itself, but also the way in which it is done, the light in which it is commonly regarded and other circumstances.'

[2] Loc. cit.

If the ' rabbiting ' takes the form of ferreting it may sometimes involve, but only incidentally, a certain amount of digging at burrows. Sich digging would be regarded, *ex fine operis,* as inescapably servile by many writers. Yet, in our opinion, even this form of' rabbiting,' if it is done as a pastime, is not servile in the sense of the law and, therefore, is not a violation of the Sunday rest. On the other hand, we would suggest that ' rabbiting ' should be regarded as legally servile and prohibited on Sundays in the case of professional rabbit-catchers, that is in the case of those whose regular daily toil and means of livelihood are ' rabbiting.' And it is submitted that these conclusions, which take into account the *finis operantis* as a criterion, best accord with the common estimation of men and with customary interpretation. Whatever may be said for the view that the *finis operantis* should *always* be considered in coming to a decision regarding the liceity of certain kinds of work on Sundays and holydays—and we believe that much can be said for this view—it seems undeniable that the *finis operantis* cannot be ignored when the kind of work under examination is *materia apta* both for a means of livelihood as regular daily toil and also for recreational, though incidentally profitable, purposes. Indeed, it is only by taking the *finis operantis* into account that satisfactory conclusions of many cases—conclusions which are in harmony with the common sense of men—can be reached. And in their practical solutions many of the textbook authors[1] make this concession—however much they may have emphasized, at an earlier stage, that the *finis operis* is the sole criterion.

THE SUNDAY OBSERVANCE—AND MOTOR-CYCLE TRIALS

I should be obliged if, at your convenience, you would apply the principles of the Sabbath rest to a matter which, for some time, has been discussed in England and which might arise in Ireland. The matter in question is the holding of motor-cycle trials. In England they are held in an enclosed grass circuit before thousands of spectators.

[1] Prümmer, for instance, writes (op. cit., n. 488) : ' Valde notandum est pro praxi opera servilia diiudicanda esse ex *fine operis,* minime autem ex fine operantis. . . . Ergo opus quod potissimum labore corporali perficitur . . . non desinit esse servile si fiat recreationis causa.' In n. 489 we read : ' Fieri potest ut opus ex se servile propter aestimationem hominum habeatur licitum diebus dominicis et festivis. E. gr. remigare, equos ducere tamquam auriga, ex se sunt opera servilia ; sin autem fiunt recreationis causa . . . ex communi aestimatione hominum habentur ut licita.* Cf. Vermeersch, *Th. Mor.,* ii, n. 480.

Does the holding of those trials constitute a violation of the Sabbath in England? If the trials were to be introduced into Ireland would they have to be condemned as a violation of the general law of the Church or as opposed to particular statute? The position in Ireland regarding the Sabbath rest is somewhat confusing and is difficult to explain to Protestants. Horse-racing is forbidden. Yet one sees huge concourses attending football games which are not without a certain commercial interest.

Your views on the above problems will be much appreciated by

S. B.

Man is bound by the natural law itself to give public and social worship to God. The exact manner in which that worship must be rendered is a matter for determination by positive law. In the Old Testament economy the Jews were commanded by God to set apart and sanctify, by prayer and rest, one day of the week—the Sabbath. 'Remember that thou keep holy the Sabbath day . . . the day of the Lord. Thou shalt do no work on it.'[1] In the New Testament dispensation Sunday replaced the Sabbath as the day of special prayer and rest each week[2] and the Church has added a number of holydays through the year. The general law of the Church[3] prescribes that, on all Sundays and holydays of obligation, the faithful are bound to assist at Mass and to abstain from servile work and certain other activities. Thus the law has a positive and a negative aspect—but, of course, the two aspects are closely inter-connected. The fundamental purpose of this law is to secure the sanctification of the prescribed days of precept—particularly by the devout assistance of the faithful at the sacrifice of the Mass. Accordingly, one of the purposes of the prohibition of servile work and other activities is to ensure that the people generally may be freed from their ordinary week-day occupations and thus may have the opportunity of rendering to God the social worship which is His due.[4] This, indeed, is not the sole purpose of the prohibition ;[6] but it is primary. Pope Leo XIII, in his encyclical *Rerum Novarum,* stressed the point. Having referred to the necessity of safeguarding the spiritual interests of the working

[1] Exodus xx, 8-10.

[1] It is not certain when this change took place. Probably it was made in Apostolic times. By the second century the change was universally established. [4] Non amplius sabbatizemus judaico more . . . ut post sabbatum omnis Christi amator dominicum celebret diem/ wrote St. Ignatius of Antioch *P.G.* 5, 768.

[3] Canon 1248.

[4] Cf. Merkelbach, *Th. Mor.,* ii, n. 685.

[4] The writers also mention the value of the Sunday rest as a means of conserving energy and of promoting family life.

classes, he continued ' From this follows the obligation of the cessation from work and labour on Sundays and certain holydays. The rest from labour is not to be understood as mere giving way to idleness ; much less must it be an occasion for spending money and for vicious indulgence as many would have it to be ; but it should be rest from labour, hallowed by religion. Rest (combined with religious observances) disposes man to forget for a while the business of his everyday life, to turn his thoughts to things heavenly and to the worship which he so strictly owes to the Eternal Godhead. It is this, above all, which is the reason and the motive of Sunday rest. . . .' A French writer[1] has expressed the same idea succinctly :

Nous ne formulerons donc pas le précepte dominical : Repos *plus* Sanctification . . . mais mieux encore Repos *pour* Sanctification.

We have mentioned these points to give, as it were, a background for our correspondent's query. This query is concerned with the negative aspect of the law prescribing the sanctification of Sundays and holydays. In effect, it is asked whether motor-cycle trials are to be included under the works forbidden on those days ? The general law[3] of the Church forbids servile works, law proceedings and, unless contrary custom or particular induit direct otherwise, public trading, markets and other forms of public buying and selling. The only one of these categories under which motor-cycle trials could even possibly be considered would be that of servile work. While it is a difficult question to decide finally how servile work should be defined,[4] it is clear enough that motor-cycle trials could not be brought within the terms of any acceptable definition. The trials themselves will be classed as a form of sport or amusement—even though they may involve some small amount of servile work, such as the servicing of machines. Sports or amusements, as such, are not prohibited on Sundays or holydays, by the general law of the Church. Local law may, of course, lay down stricter regulations for the due observance of these days of precept. Thus, for instance, in this country, the bishops, in Plenary Synod,[5] most strictly prohibited the holding of public horse or dog races on any Sunday. It is forbidden also to hold these races on holydays apart from particular cases in which the bishop may, for special reasons, give permission. In regard to

[1] English translation published by Catholic Social Guild, Oxford, p. 37.
[2] Michaud, in *Revue Apologétique,* lxiv (1937), p. 173.
[3] Canon 1248.
[4] Cf. McReavy, ' Sunday Repose from Labour, in *Eph. Th. Lou.,* xii (19351.
[5] *Cone. Plen. Maynutiani* (1927), n. 333.

athletic contests, usually held on Sundays, between the youth of the different counties, the bishops express the wish that, if at all possible, they should be held on days other than Sunday. There is no mention, in this particular law, of motor-cycle trials. Therefore, we must take it that they are not forbidden—at least by the letter of the law. Nor are we aware of any local ecclesiastical law in England which prohibits them or other forms of sport. There are civil regulations which restrict certain amusements; but we are not immediately concerned with the prescriptions of civil statutes in this matter, except, possibly, in the very unlikely hypothesis that strict adherence to them might have given rise to a binding custom, or insofar as a violation of them might be a cause of scandal—and we do not mean pharisaic scandal.

We must admit, then, that the holding of motor-cycle trials is not opposed to the letter of the general law of the Sunday observance, or to the letter of particular law in Ireland, or in England, as far as we are aware of such particular law. But we hasten to add that the holding of such trials might easily enough, in certain circumstances, be opposed to the spirit and purpose of the law. If it be found that certain activities or occupations, which cannot be classed among the servile or prohibited works, seriously endanger, on the part of participants or spectators, the fulfilment of the positive precept of assisting devoutly at Mass—these activities would, in the circumstances contemplated, be forbidden. The prohibition here would arise *per accidens*[1]—but it would be none the less real. Or again, if indulgence in forms of amusements is such that thereby the sacred atmosphere of the Sunday is completely destroyed and the minds of the faithful are entirely distracted from religious aspirations and obligations—such indulgence would stand condemned. The consequences mentioned might easily enough result from the unrestricted organization of Sunday amusements, especially of the noisier and more profane types. We may remark, in passing, that it would be hard to imagine a noisier form of amusement than motor-cycle trials. The local ecclesiastical authorities are in the best position to judge whether the holding of these trials, or of other forms of amusement, is, in the particular circumstances, calculated to be such a disturbing factor to the faithful in their religious observance of Sunday as to merit direct and formal prohibition.

There is one other point in our correspondent's letter. He

[1] We may recall here the accepted principle: "finis legis non cadit sub lege"—hence we have described the prohibition as arising *per cucidens.*

states that the position regarding the Sunday observance in Ireland is confusing, and he mentions the difficulty of explaining it to Protestants. We have indicated what the law, general and particular, prescribes, and the reasons behind the prescriptions. It seems to us that the Catholic approach, and, therefore, the Irish approach, to this matter is radically different from that of Protestants. For us, and here we are well within the spirit of the law and of the centuries-old tradition, the principal obligation on Sundays and holydays is assistance at Mass.[1] We know from our Faith what the Mass is and means : we understand its implications as an act of worship. Here, as elsewhere, it is the Mass that matters. Hence, as has been noted, the emphasis is laid upon the positive obligation. It is realized that the negative aspect of the law has not an independent *ratio* and, therefore, should not be isolated. It is orientated towards the fulfilment of the positive obligation. Moreover, the Catholic Church, mindful of the advice of her Divine Founder, recommends joyous and cheerful service of God.[2] Protestants have rejected and lost the Mass. They have in its place only a jejune ritual. Consequently, the negative side of the Sunday obligation came to be stressed and interpreted out of all proportion—so that we find in some Protestant areas the drab, dreary, joyless Sundays of a puritanical Sabbatarianism, which is really a throwback to the pharisaic observance against which Christ so frequently inveighed. It has been said that England ceased to be 'merrie' when she ceased to be Catholic. In Ireland it may well be that Sunday amusements are sometimes overdone, and that there is need for vigilance and instruction in that direction. But it is admitted that our people generally are almost uniquely faithful in their discharge of the positive obligation, and so, at the least, they have not missed the wood for the trees.

KNITTING ON SUNDAY

I would be grateful for a discussion on the subject of knitting on Sunday. While the textbooks seem to forbid knitting an a servile work, not a few priests, I think, do in practice allow it on Sunday.

[1] This is the only positive obligation which is prescribed by strictly ecclesiastical law. Writers discuss the question whether the faithful are bound to attend sermons and devotions as part of their dutv of sanctifying the Sunday. Attendance at these functions might sometimes be an obligation of the natural law, e.g. to get necessary instruction or to avoid scandal. But this lies outside the ambit of canon 1248.

[1] Cf. Davis, *Moral and Pastoral Theology,* n. p. 68.

It certainly must seem a little strange to penitents when they find two confessors, even in the same church, holding directly opposite views on the simple subject of knitting.

M. D. C. C.

It is not always easy to determine satisfactorily what works are servile and, therefore, prohibited on feasts of precept. In the textbooks it is generally stated that knitting is a servile work, because it is mainly mechanical and requires no particular mental effort.[1] From this it would follow that, apart from an excusing cause,[2] it would not be lawful to knit on a Sunday. But we have suggested that we do not regard the textbook teaching as satisfactory. Nor are we sure to what extent it is true that knitting requires no particular mental effort. It is perfectly clear that if girls are employed in a knitting factory during the week it would not be lawful for them to continue this factory work on Sunday. But if knitting is indulged in as a recreation (though a useful one, of course), we think that it is not a servile work within the meaning of the law and, therefore, is not prohibited on Sunday.[3][4] This conclusion follows from our interpretation of the term servile work. Even if the usual textbook interpretation is accepted, it may be that, by custom or in the common estimation of the inhabitants of the place to which our correspondent refers, knitting for recreation is regarded as a non-servile work. In these circumstances also it would be permitted on Sunday. The following passage relevant to the point at issue is interesting and piquant :

Les tridanccs actuelles influeront sans doute sur l'avenir. Peut-être les auteurs de théologie seront-ils amenés à reviser leurs catégories d'oeuvres permises ou défendues qu'ils transcrivent depuis des siècles ou à en faire passer quelques-unes des catégories intermédiaires dans la première. Pourquoi écrivent-ils qu'il est permis de broder, mais non de tricoter ou de faire de la tapisserie ? Ne viendra-t-il pas un temps où l'on jugera permis tous les travaux légers, en particulier ceux de l'aiguille ? De telles distinctions font trop facilement à nos contemporains l'effet de distinctions rabbiniques. ·

[1] ' Si enim in aliquo opere perficiendo nulla fere ars aut specialis attentio mentis necessaria est tale opus est mechanicum et servile ut e. gr. acu texere.'—Prümmer, *Th. Mor.,* ii, η. 488.

[2] Our correspondent is not, we take it, concerned with the case where an excusing cause is present. His precise difficulty is whether or not knitting may be permitted on Sunday apart from any such cause.

[3] Cf. *Ami du Clergé,* 1926, p. 554, cf. *supra,* pp. 97-101.

[4] P. Jombart in an article in the *Revue des Communautés Religieuses.* 1931.

IS RECREATIONAL PAINTING OF CARDS SERVILE WORK ?

Certain persons by way of relaxation spend free time on Sundays painting cards such as Feastday cards and the like. Does the fact that such work was done on Sundays render sale of same unlawful ? A reply to this query will much oblige.

Doubtful.

The work described by our correspondent—a sample of which was enclosed—is liberal and recreational. It may, therefore, be done on Sundays. The fact that it is done on Sundays does not at all render sale of the products unlawful. Liberal and recreational work can, of course, be profitable. We might also add, to look at the matter the other way round, that the fact that the cards are being painted with a view to selling them does not, in the circumstances, make the work servile and unlawful on Sundays. The recreational aspect is primary.

FULFILMENT OF SUNDAY PRECEPT AT MASS OUTSIDE CHURCH OR ORATORY

I have often been asked to quote some authority regarding the immemorial custom in Ireland whereby a Mass attended *anywhere* will validly satisfy the Sunday precept. Naturally a bishop or parish priest must have some authority to regulate *lawful* attendance at ' private ' Masses in summer camps, hotels, etc. ; but is it true to say that they can render such attendance an ' invalid ' fulfilment of the precept? Various exceptional and emergency cases arise at times and many people are worried at being told that they do not hear Mass. I would be grateful for a precise reference to a published reply.

U. N.

Since our correspondent has asked primarily for references to published replies, we have pleasure in directing his attention to the *Irish Ecclesiastical Record* of 1882 (vol. iii, Third Series), p. 361 and pp. 433-6. He will also find some helpful information in the *Irish Ecclesiastical Record* of 1908 (Fourth Series), pp. 76–81.

For the benefit of readers who may not have access to these volumes, it may be well to repeat here an outline of the discussion given in 1882. Two questions had been asked : (1) does a person satisfy the obligation of Sunday Mass by assisting at it in a private house ? (2) when a bishop permits the celebration of Mass in a private house on Sunday may he impose limits

regarding the people who can discharge their obligation by assisting at that Mass ? The reply given consists of a statement of a distinguished Irish bishop who was consulted. The editor felt that this was the most satisfactory form of reply inasmuch as the queries had relation to the exercise of episcopal authority and were concerned with the situation in Ireland. The bishop's statement ran thus : 'As regards the questions proposed by your correspondent, there is no doubt in my mind that in this country a person fulfils the obligation of hearing Mass on Sunday, etc., by hearing it in a private house. So far as such laws of the Church are concerned, Ireland has for three centuries enjoyed all the privileges of a Missionary Church and hence the strict theological rules about hearing Mass do not apply to us. I do not wish to speak so decidedly or so authoritatively on the second question. - - - I would take great interest in hearing the case argued by two good theologians holding opposite opinions. I have met a good many persons who, in the second case proposed by your correspondent, would affirm that the obligation of hearing Mass was not fulfilled, but I invariably found that they rested this opinion on the general rules of the Church and they disagreed with me in replying to the first question proposed.'

Subsequently a correspondent who signed himself ' Dub. Sac.'—obviously a widely-read theologian—took up the discussion of the two questions proposed.[1] He agreed wholeheartedly with the reply given by the bishop to the first question, and by a series of quotations from representative moral theologians tried to establish this reply on a broader and firmer basis. He cited St. Alphonsus, Lacroix, Tamburini and Pope Benedict XIV for the opinion that, in the prevailing circumstances, the obligation of hearing Mass can be fulfilled in any place whatsoever—unless the Roman Pontiff except some individual place. This exception is generally made in the Induits granting the privilege of a private oratory. In the light of these quotations, which, it is claimed, demonstrate the validity of an affirmative reply to the first question, ' Dub. Sac.' claims that a negative answer must be given to the second question. He quotes Benedict XIV :[2]

Non posse hodie Episcopum praecipere suis subditis ut se sistant missae paroechiali, quia non potest delere consuetudinem quae cum vigeat in toto orbe iam induit naturam iuris communis.

This correspondent concludes by saying that ' it is quite within

[1] *I. E. Record,* vol. iii, p. 433 et seq.
[2] *De Syn. Dioec.,* l, xi, c. x.

the range of episcopal authority to prevent the celebration of the Holy Sacrifice in private houses but, once it is celebrated whether with or without the consent of the bishop, the faithful who assist thereat on Sundays and holidays of obligation fulfil the requirements of this important precept.'

As readers will be aware, it is stated in canon 1249 that one satisfies the precept of hearing Mass (on a Sunday, etc.) by being present at the Holy Sacrifice, celebrated according to any Catholic rite, in any church, public or semi-public oratory or in the private oratories of cemeteries—but not if it is celebrated in other private oratories unless this privilege was granted by the Holy See. In an earlier canon[1] it is pointed out that the local Ordinary (or the Major Superior in the case of the house of an exempt religious institute) can, for a just and reasonable cause in an extraordinary case and *per modum actus,* permit the celebration of Mass outside a church or oratory. The Mass must be said on an altar-stone and in a becoming place—never in a bedroom. In 1952, the Commission for the Interpretation of the Code was asked :[2] 'Whether, notwithstanding the prescription of canon 1249, the law on hearing Mass is satisfied by one who assists at Mass in the place mentioned in canon 822, § 4.' The reply given was : 'in the affirmative.

This reply has direct reference to cases in which permission is formally granted by the local Ordinary, etc., for the celebration of Mass outside a church or public oratory. But it can be applied also to cases where, as in some places in Ireland, the permission is granted by custom, *tolerante episcopo.* It is within the competence of the bishop to forbid the celebration of Mass outside a church or oratory and, in the interests of public order, to restrict the number of people who may lawfully assist at such a Mass when it is permitted. But it is a moot point whether the bishop can declare that assistance at this Mass—in defiance of the episcopal restriction—does not discharge the Sunday obligation. Much might be said on both sides of the question. The distinction suggested by our correspondent between a valid and lawful discharge of the obligation of Sunday Mass may be sustainable in theory, but it is difficult to see its practical application or value. It might be argued that the bishop cannot abolish the custom whereby the Sunday obligation is discharged wherever Mass is heard. If this were a universal custom it would indeed be impossible to sustain contrary particular legislation. But one might query the

[1] UJ22T§4.
[2] *A.A.S.,* xliv, 497.

universality of the custom, with due regard for the passages from representative authors quoted by 'Dub. Sac.' Moreover, the custom does not operate against the competence of the bishop to issue regulations in the interests of public order: it is a custom rather against the requirements of law in regard to the place where the obligation of Sunday Mass must be discharged. It can, perhaps, better be argued that the recent reply of the Commission for the Interpretation of the Code implies that a bishop may not declare that one who assists at a Mass (celebrated with the permission of the local Ordinary outside a church or oratory) does not fulfil the precept of Sunday Mass. The reply, which is an authentic interpretation of the general law, states in general terms, without any qualifying clause such as *salvojure episcopi imponendi restrictiones,* that assistance at the Mass in question satisfies the law. On the other hand, it might be said that the reply simply declares that the precept is discharged—without any further statement—when the Mass is celebrated in accordance with the requirements of canon 882, §4, and that there is no impingement upon any right of the bishop to restrict the number of those who can avail of the Mass to fulfil the precept. It is clear that this recent reply does not mean that assistance at Mass in a private oratory is sufficient to discharge the Sunday obligation for others than those mentioned in the Induit granting the privilege of the private oratory.[1]

[1] Cf. Instruction of S. Congr. of Sacraments on asking Induits for Private Oratories, *A.A.S.,* xli, 493 et seq.

SECTION IV

FOURTH COMMANDMENT

THE OBLIGATIONS OF A LANDLADY TOWARDS HER LODGERS

I should be grateful if you would discuss the obligations of a landlady towards the people lodging in her house. Is she obliged to see that they are within her house at a fixed time? Is she in any way to be considered as *in loco parentis*?

Perplexed.

'Perplexed's' letter runs on very general lines. A landlady has obligations in justice and in charity towards all her lodgers. The precise extent of her obligations in justice will depend upon the contract which has been entered upon between the parties. Broadly speaking, a landlady is bound in justice to provide the manner of lodging and food as contracted, and for the agreed sum. Further, this sum must not be exorbitant—that is, out of all proportion to the actual costs incurred, plus a reasonable profit. Which is another way of saying that a landlady may not lawfully take advantage of extreme scarcity of lodging accommodation to extract exorbitant rates. If there is an agreement to this effect, a landlady is also responsible for the property on her premises of lodgers and boarders[1]—so that if it is stolen or damaged she must make good the loss. These are the main obligations in justice.

We gather from our correspondent's letter that his primary interest is in the other obligations. A landlady, as mistress of the house, should see to it that the conditions of residence do not constitute a danger or occasion of sin for her lodgers. Scandal and co-operation on her part assume an aggravated malice. In brief, a landlady is bound, as far as is reasonably possible, to ensure that a healthy moral and religious atmosphere pervades her house.

In regard to youthful lodgers, her obligations in these respects are more urgent. Very often a landlady is, for these lodgers, clearly *in loco parentis*. She may have been explicitly placed in this position by an agreement with the parents who entrusted

[1] Cf. Davis, *Moral and Pastoral Theology*, ii, p. 400.

the children to her care. This trust must be faithfully discharged. Which means that the landlady is bound to safeguard, so far as she can, the moral and physical well-being of these children. She should sec to it that they keep good hours and are attentive to their religious duties. This may imply correction and instruction. In exercising these functions the landlady is vested with quasi-parcntal authority. Even when there is no explicit agreement, a landlady may be said, in a loose sense, to be in *loco parentis,* in relation to adolescent boarders. Hence, towards them she has obligations which approximate to those just outlined. In the Christian economy we all are, to some extent, our brothers' keepers. And it well accords with that economy to say that, in the nature of things, landladies are, in a particular way, the keepers of their young lodgers. The conscientious landlady can make a distinct contribution to the problem of youth guidance—especially in these days when the lines of so many young people are laid away from the protection of the parental home. We realize fully that the exercise of due control is no easy matter for a landlady. It will demand from her tact, sympathy and understanding. But it will merit for her the deep gratitude of anxious parents and, indeed, the gratitude of many youthful lodgers—though, to them, at times, control may seem an irksome yoke and hindrance.

OBLIGATION OF HOUSEHOLDERS REGARDING THE SPIRITUAL WELFARE OF THEIR DOMESTIC EMPLOYEES

I would be grateful for a few words on the obligation of a householder in regard to the supervision of a female domestic " living in " who keeps very late hours. When she takes her evenings off she does not return until well after midnight—perhaps even after 2 a.m. Advice, reprimands, threats of dismissal have no effect, partly because the girl knows she is needed for the work in hand and that it is difficult to replace her at any time and almost impossible in the middle of a working year. The employer finds that speaking to the girl's mother or father is no help, and questioning the girl herself elicits only evasive and, one fears, untruthful replies. Does the employer fulfil his obligation by remonstrating with her or is he obliged to dismiss the girl even at grave inconvenience to himself? This situation is constantly recurring and, at the moment, several cases come to my mind.

Rusncus.

Householders are, of course, bound in charity to look after the spiritual welfare of their domestic employees. And we might add that the obligation urges, in a special way, in regard to young domestic employees. Responsibility for them is somewhat analogous to that which exists in regard to the children of a household. It is hardly necessary to say that householders should approach the question of the control and care oftheir domestic employees in a kindly, tactful and reasonable way. They should explain their responsibility, give reasons for any restrictions—which should not be unduly rigid ; they should point out the dangers of late hours, etc. As far as possible they should arrange for suitable companionship and make the conditions of domestic life attractive. But in the last analysis, it is difficult to see what correctives can be applied by a householder to recalcitrant domestic employees beyond those mentioned by our correspondent : advice, reprimand, threat of dismissal.

In our view the householder is not normally bound, at the cost of grave inconvenience to himself, to dismiss a domestic employee who, in spite of corrective measures, persists in keeping very late hours. He would, however, be bound to dismiss the employee if this were the sole means of preventing grave scandal or if it were certain that the late hours are a proximate occasion of grave sin for the employee. We realize that it will be hard to decide when these conditions are verified. Personal questioning of the employee will not often, as our correspondent remarks, elicit much information. But discreet and confidential enquiry from prudent and reliable people may allay or substantiate suspicion. Episcopal pronouncements and regulations regarding the earlier closing of dance halls will, we may hope, win our young people to a sane attitude in all this matter of late hours—which can be detrimental in so many ways.

THE MORALITY OF A STATE BAN ON THE EMIGRATION OF MINORS

As a means of protecting our young people from the moral dangers (mixed marriages, etc.) into which they rush as emigrants before they are mature enough to realize what they are doing, it is thought by some that emigration of girls under twenty-one, save under special permit, should be forbidden by the State.

It has been objected that this would be a usurpation by the State of the rights of parents and is, therefore, morally not permissible. Against this objection it is argued that the State restricts freedom

when it limits dancing hours, drinking hours, ages, etc. Are these restrictions admissible ?

It should be noted that parents who would be slow to co strain their children regarding a questionable film or the like, welcome State action which relieves them of individual responsibility. Many moralists do not understand this point. If all the town is going to some show, parents hate to make their young children self-conscious about it, so they tacitly refrain from interference. But if they had any means of checking the show in bulk, so to speak, they would be glad. As an individual one would be slow to forbid emigration, but as a citizen, with all others equally committed, one would rejoice.

Would you indicate the limits of the State's proper action in controlling the movement of minors ?

Auctor.

In our view restriction of the movement of minors, by way of a ban on their emigration, is morally inadmissible. Such a ban would conflict with parental rights regarding education and upbringing in the case of younger children, as well as with the personal rights of the minors themselves in the case of those approaching their majority.

The parents have a strict and inviolable right to make suitable provision for the welfare of their offspring. 'The family holds directly from the Creator the mission and hence the right to educate the offspring, a right inalienable because inseparably joined to the strict obligation, a right anterior to any right whatever of civil society and of the State, and therefore inviolable on the part of any power on earth.'[1] In all this matter of the educating and ensuring the welfare of children, the licit function of the State can only be supplementary.[2] The primary duty of the State is to safeguard the prior parental and personal natural rights as well as the supernatural rights of the Church of Christ.[3] The State has special duties regarding the education of children when the parents, or those who hold the place of parents, are unwilling or unable to discharge their obligations—and here, of course, the State must take due account of the requirements of the law of God and of His Church. In general, the State, by making available the necessary means, can promote the education of the citizens. It can lay down and demand from all capable of it a minimum standard of physical, intellectual and moral culture which, in the conditions of the

[1] Encyclical of Pope Pius XI, *Divini Illius Magistri,* English translation, C.T.S. (London), p. 14.
[2] Cf. McKcvitt, *The Plan of Society,* ch. xii.
[3] Cf. Encyclical, *Divini Illius Magistri,* p. 19.

time, is really necessary for the common good. It can establish minimum standards for those charged with the duty of education. It can make express provision for the civic and political education of citizens. But it cannot lawfully insist that children be sent to particular places of education. Nor can it prevent parents from sending their children, or the children from going, outside the country for their education.[1]

In this context the term education must not be taken in the falsely narrow sense of mere book learning. It means upbringing, general welfare, whatever forms part of the preparation of the children for the living of their independent lives.[2] It seems perfectly clear to us that there is no real parallel between a State ban on the emigration of minors—even a restricted State ban—which involves a whole way of life for those concerned, and prohibitions[3] against the attendance of younger children at certain dances or other places of amusement. We agree and we understand clearly—the suggestion of our correspondent notwithstanding—that it is easier for parents to enforce an existing State prohibition than to initiate and issue a prohibition of their own. But surely our correspondent does not wish to imply that what is *easier* to do is always the more correct—or, indeed, is even necessarily correct at all. In reply to our correspondent's incidental question, we must say that we do not regard State restrictions in reference to the sale of intoxicating drink to younger children or to their attendance at dances, etc., as ethically inadmissible. But we must add that we cannot help regretting the necessity of these restrictions. If parental authority were properly exercised and duly respected there should be no need for such State intervention. We lament the desire of parents—as evidenced in our correspondent's letter—to eschew their family responsibilities and to have a State ukase to fall back upon to encourage them to do their bounden duty regarding the moral protection of their children. If this goes on the parents of to-morrow will be calling in the Civic Guards to give necessary admonition and chastisement to their offspring ! We know of no more demoralizing or more dangerous tendency in the economy of modern life than this constant invocation of the State to intervene in what should be the private domain of human living. Out of such tendencies a

[1] Cf. ibid., pp. 20-21 ; McKevitt, op. cit., p. 129.

[2] Pope Pius XII bases the case for emigration on the natural 'right of the family to vital space.'—La Solennité della Pentecoste, 1st June, 1941.

[3] These prohibitions affect younger children (not all minors) in a temporary and relatively insignificant way.

totalitarian mentality is begotten and a totalitarian régime may be born. We sec no good ground for rejoicing here. By all means, and in every lawful way, let the State supplement and support the efforts of individuals and parents in the exercise of their rights and the discharge of their duties.[1] But, for the sake of our Christian heritage, let us refrain from invoking the State to supplant the individual and the family. And let us resist, with all our vigour, any attempt of the State to intrude itself into the inviolable sphere of natural parental and individual rights.[2] Eppstcin writes :[3] ' The State now arrogates to itself the right, not only to take reasonable precautions with regard to people entering or leaving its territory, but to decide absolutely whether any human being may move about or not. It is one of the worst abuses of sovereignty. . . . One of the most important of human rights, therefore, which now need to be reasserted and defended is the right to travel and migrate freely for peaceful purposes, subject only to the reasonable requirements of public order and economic welfare.' In the ' Declaration of Rights ' drafted by a Committee of the National Catholic Welfare Conference we find listed :[4] ' The right of access to the means of livelihood, by migration when necessary.'

Thus, our opposition to even a restricted State ban on the emigration of minors lies not in the way of mere opportunism but in the higher way of human rights—parental and personal. Our opposition is based upon the reality and the inviolability of these rights. We do not approve of, or look lightly upon, a high incidence of emigration, which is a heavy drain on the life-blood of our nation. Neither do we approve of, or look lightly upon, war—yet we cannot believe in peace at any price. Emigration for us is, indeed, a serious problem in the social and national spheres.[6] And our correspondent presents it

[1] Encyclical of Pope Pins XII, *Summi Pontificatus,* English translation (C.T.S., London), p. 26 : 'Almighty God has entrusted to fathers and mothers of families the duty of providing for the best interests of their several children in this life and in the life to come. . . . That is a right which no man can usurp, without the gravest injury to natural justice.' Again the Pope speaks of ' the essential task of every public authority - - - to protect the intangible sphere of man's personal rights.'

[2] The supernatural rights of the Church are, of course, also inviolable and must be defended against any State encroachment.

[3] *Defend These Human Rights,* Catholic Social Guild, Oxford (1947), pp. 31-32.

[4] Apud Eppstein, op. cit., p. 47. This right has also been included in the Charter of human rights adopted by UNESCO.

[6] It is our belief that the present high incidence of emigration is to no small degree aggravated by psychological factors—to a certain monotony of home conditions, especially in rural areas, and to the specious attractions predicated of life elsewhere.

particularly as a moral problem. This latter is, of course primarily the concern of the Church authorities. Our correspondent assumes the prevalence of widespread moral lapses resulting directly from the emigration of young girls. We should like to have statistics on this point. What percentage of Irish girls in their minority are guilty of serious moral lapses during and by reason of their residence in a foreign country? This is another way of posing the practical question: can a State ban on the emigration of minors be calculated to reduce effectively and considerably the percentage of such lapses? It would be impossible, we think, to answer that question in any categorical way. The answer might, indeed, be a near negative. For it is well known that the problem of moral lapse is too deep and too close to the heart of things to be touched very effectively by a mere State ban.[1] But even if the question posed could be answered by a most definite affirmative, we should still regard a State ban on emigration as, at best, the lesser of two evils. And we are not forced here to make an unavoidable choice between two evils. There are other ways and means of helping to safeguard the morals of our emigrants—ways and means which, we have no doubt, the ecclesiastical authorities here and elsewhere are taking, and which they will, as time goes on, be able, increasingly and more effectively, to take.

As a counterblast to emigration, with its attendant evils and dangers, it is the duty of the State to provide at home, as far as may be possible, suitable opportunities of a decent livelihood for all its citizens. It is further the duty of the State to make clear to all concerned—parents and children in particular—the conditions and dangers which await the emigrant in foreign lands. These are the immediate and positive duties of the State in regard to the problem of emigration.

[1] The attempt of Society to control the lives of its individual members fails to awaken in them any increased sense of moral responsibility. Such an attempt at control rather kills or numbs the sense of responsibility already acquired. (Cf. Jacques Maritain, *The Person and the Common Good,* p. 65.) We do not imply that the State has not duties in the moral sphere. It has. (Cf. Encycl. *Summi Pontificatus,* p. 22.) But a primary overriding duty is to have due regard for the personal rights of the citizens. All other duties must be exercised within that primary framework.

SECTION V

FIFTH COMMANDMENT

DIRECT AND INDIRECT SUICIDE

Caius, a Catholic, a secret agent and an organizer of resistance ' cells ' in an enemy occupied country, is dropped by parachute into that country. He carries with him a cachet or phial of cyanide, his instructions being to take this poison if he is captured by the enemy and is about to be tortured to make him betray his collaborators. He is captured. Realizing that his comrades' lives depend upon his silence he consumes the cyanide and dies in a few moments. Is his action lawful ?

Jorio *(Th. Mor.,* ii, n. 164, 2) writes : ' Ad castitatem servandam licet mulieri vel viro se exponere periculo mortis . . . probabilius vero si mors certo secutura sit et quamvis non adsit proximum periculum consensus quia etiam sola corporis integritas seu pudicitia maximi æstimatur. Since so much depends upon Caius silence, is he not similarly justified ?

Subscriber.

In our view the action of Caius is direct suicide and, therefore, is intrinsically immoral. No cause, however important, can justify this action. We feel sure that all traditional moralists would agree with our solution of this case. The situation-ethicians and their camp followers and partial sympathizers might possibly see in the case one of those situations in which there is an insoluble conflict of duties and in which, therefore, Caius may sacrifice himself for the attainment of a greater good, and thus they would probably regard the suicide as, at a minimum, morally justifiable.[1] Leaving aside this totally unacceptable conclusion, the case as proposed, with the sub-joined quotation from Jorio, inevitably raises the complex question of the distinction between direct and indirect suicide—which, in turn, is only a particular aspect of the wider question of the analysis of direct and indirect effects and of the distinction, and of the manner of making the distinction, between them.

[1] M. Van Vyve, in a challenging article, ' La Mort Volontaire ' *(Revue Philosophique de Louvain,* t. 49 (1951), pp. 78-107) raises many difficulties against the traditional doctrine and submits the traditional arguments to severe criticism. He has this relevant comment : ' Rappelons (' example du prisonnier qui, par sa mort, sauve ses compagnons d'une dénonciation inévitable. Dira-t-on que son acte est nuisible à la société parce qu'il la prive d'un de ses membres ? Mais n'en sauve-t'il beaucoup d'autres.' It is difficult to reconcile some of Van Vyve's views with papal teaching

A full discussion of these questions would take us very far afield. We shall confine ourselves to a brief analysis of the differences between the case submitted by our correspondent and the situation mentioned by Jorio.

We have said that the action of Caius in taking the deadly poison is direct suicide. That is to say it is an act which aims, *ex fine opens,* at the destruction of his life. This destruction of human life is the immediate and *per se* object and effect of the act placed. It is true that, in the circumstances, this destruction of life is not aimed at as an end in itself but as a means of conserving highly valuable secrets. Nevertheless, the death of Caius is the direct effect of taking the poison. An act which aims at the destruction of human life, whether such destruction be intended as an end in itself or as a means to some other end, however lawful, is direct killing. This is the express teaching of Pope Pius XII.[1]

In the situation described as lawful by Jorio there is a question of a person exposing himself to danger of death—even certain death *ex ordinariis contingentibus*—in order to preserve his chastity. But the act whereby he exposes himself to this danger does not in the circumstances cause death as a direct effect but only indirectly. In a footnote Jorio gives examples of the kind of act he has in mind : *ut se projiciendo in fiumen, ab alta fenestra,* etc. The immediate object, the direct effect of such an act is, in the context, to escape from the unchaste attack. The fact that death will also result from this means of escape, the fact that it will certainly result, is due to the presence of factors which are outside the immediate object of the act placed ; is due, in other words, to the particular extrinsic circumstances in which the attempt to escape has to be made. These circumstances are, in the examples given by Jorio, the elevation of the window, or the depth of the river conjoined with the fact that the person cannot swim. The association of these circumstances with the attempt to escape leads to a further accidental and indirect effect—namely the death of the escapee. But this, we repeat, is entirely outside the immediate object of the act placed which is the getting away from the attacker. This object might equally be attained if the window were on the ground floor or if the river were shallow. The situation would be entirely altered and a different moral judgment would be given if a person were to throw himself from a top-story window to end his misery or to escape from the trials of life. In this

[1] *A.A.S,* xliii, (1951) p. 838.

hypothesis the position of the window would indeed be relevant to the *finis operis,* would enter into the immediate objective of the act.

Locutione vulgari hoc exprimitur saepe his verbis : Titius ut evitet mortem igne se projicit ex fenestra *quamvis* hacc sit alta. Si autem Titius intenderet se liberare a miseriis vitae humanae, tunc se projiceret e fenestra *quia* est alta. Si non esset ex altitudine actus projiciendi ad hunc finem non esset bonus seu utilis. Tunc eligeret ideoque vellet ut medium : se projicere e fenestra alta.[1]

We should point out here that the judgment on the morality of acts like those under consideration here does not depend solely upon the purpose for which the act is done. In other words it is not merely because the conservation of chastity and bodily integrity is so highly virtuous that moralists allow one whose virtue is attacked to incur, in the effort to escape, the danger of certain death in the manner mentioned. If, in the context, to throw oneself down from a great height were an act directly destructive of human life, no purpose, however high, could justify it.[2] Thus, for instance, it would be unlawful for one whose virtue is being attacked to take a dose of lethal poison to escape this attack—even if the taking of the poison were the sole means of escape and even if there was grave danger of consent to the sin.

As we have hinted, there is not any general agreement among the moralists regarding the analysis of, and the basis of the distinction between, direct and indirect effects. Some writers hold that the basis of the distinction is to be found solely in the nature of the action itself. Others maintain that the primary consideration is the *finis operantis.* Others again seem to strike a middle way and hold that while in some cases the direct effect can, so to speak, be diagnosed from the nature of the action itself, often an action will have two or more apparently equally immediate effects and that, in these circumstances, it is the *finis operantis* that determines which of them is the direct effect. Father Hürth, for instance, maintains that when an act has two or more equally immediate effects the

[1] Bender, ' Occisio directa et indirecta ' in *Angelicum,* xxviii (1951), p. 238.

[2] ' We prescind here from the possibility that, in certain circumstances, God might, by inspiration of some kind, authorize an individual to take his own life directly. Van Vyve, summing up the accepted teaching of Catholic theologians, writes : " Les théologiens sont unanimes au sujet de la thèse. La mort qu'un homme veut de façon directe de sa propre autorité, est gravement illicite. Seul Dieu peut permettre à un homme de se donner la mort. Mais il peut déléguer son autorité soit à un individu, soit à la société. . . . La delegation accordée à un particulier se fait de façon directe par " inspiration." ' —Art. cit., p. 81-2.

direct effect is that chosen and intended by the agent, while the other effects which the agent merely tolerates or permits are indirect.[1] But we should add that we feel certain that if Father Hürth were to examine the case stated in the query he would not admit that the two effects—death from poisoning and the preservation of secrecy—follow equally immediately and *per st* from the taking of the cyanide. Consequently it would not be in order to invoke the *finis operantis* in this case to determine which effect is direct. And Father Hürth's solution of the case would correspond to that given by us. However much it may be pleaded that Caius' dominant intention, his *finis operantis,* was to preserve secrecy—this would not make the preservation of secrecy the direct effect of his action. Father G. Kelly, in a brief reference to the different views on the analysis of direct and indirect effect, adds this very interesting personal comment: 'I believe that the essential notion of an *effectus indirectus* is aptly expressed in English by the word "by-product" and an effect is indirect in the complete sense when it is an unintentional by-product of an action which is intentionally aimed at producing another effect. But a by-product is not necessarily a *per accidens* effect. Thus, if I may be pardoned a homely analogy', - - - I should think that it is not merely *per accidens* that buttermilk is produced when butter is made, yet buttermilk seems to be a by-product with respect to the churning of butter.'[2] If we may keep Father Kelly's attractive analogy, while admitting that buttermilk is a by-product of the act of churning cream, we might ask to what extent is it an unintentional by-product; how far is it true that the buttermilk is merely tolerated? And suppose the housewife really wanted and intentionally aimed at producing the buttermilk—it is an excellent drink—rather than the butter—does the production of the buttermilk then become the direct effect and the butter the by-product?

Since Jorio has been quoted in the query we may add, by way of conclusion to this discussion, that our author seems strangely illogical in his footnote to the quotation. He would allow one to leap from a height to certain death in order to preserve one's chastity from attack. But he rejects the view that a person may leap to certain death from a burning building in order to escape certain and imminent death from the closely approaching flames—

> ad effugiendam mortem per ignem iamiam certo instantem.*

[1] *Periodica,* xl (1951), pp. 405-6.
* *Theological Studies,* xiv (1953), pp. 40-1.
[2] Loc. at., note 1.

THE MORALITY OF THE AMPUTATION OF A HEALTHY ORGAN

On 8 October, 1953, Pope Pius XII addressed the delegates to a convention of the Italian Urological Society. In the course of his address the Pope answered two specific questions put to him by the delegates. The first of these questions—and one of particular interest to medical ethics—was whether it is lawful to excise healthy seminal glands when this excision is considered necessary to cure or to arrest a dangerous disease in some other part of the body. The special interest in this case is that the organ which would be removed is itself healthy. The question of the removal of a dangerously diseased organ is familiar, and poses no great problem.

In his reply the Pope set out firstly the general principles which govern the liceity of anatomical and functional amputation. These conditions are necessary for liceity. The retention of the particular organ—or of its function—must constitute a serious danger for the whole body. The removal of the organ—or the suppression of its function—must be judged to be the effective and only available means of preventing, or of notably diminishing the danger to the whole body. Finally, there must be solid reasons for thinking that the good results obtained from the mutilation will compensate for the organic loss sustained.

Cases may arise in which the continued normal functioning of a healthy organ can, of itself, seriously aggravate the disease of another organ and can thus be a grave threat to bodily life or health. In these circumstances, if the amputation of the healthy organ—or the suppression of its function—be the only available effective means of preventing, or of greatly diminishing the danger to the whole body—then the amputation is lawful. In virtue of the principle of totality the individual organs of the body are, when there is a conflict, subordinated to the welfare of the whole body. In accordance with this principle the human person, who has the right of use of his whole body, may sacrifice particular organs when the retention of these organs, or the continuance of their function, would cause serious injury to life or health—if this injury cannot be otherwise avoided. In the light of all this the Pope then answered the specific question put to him. His reply was that, in the assumption that the removal of the healthy seminal glands is the only available means of combating the disease, this removal gives rise to no moral objection.

The Holy Father went on to warn his audience against a false application of the principle that individual organs, even healthy organs, can, in certain circumstances, be sacrificed for the welfare of the whole body. Frequently enough, in face of gynaecological complications—or even apart from these—a surgeon removes healthy fallopian tubes, or renders them incapable of functioning, in order to prevent a further pregnancy which, by reason of disease in other organs, such as the heart, kidneys, etc., may be gravely dangerous to the life or health of the mother. The principle that particular organs may be sacrificed to the welfare of the whole body is invoked to justify the surgical interference with the healthy fallopian tubes. But this is a false application of the principle. In the case under consideration the danger which threatens the mother does not come, directly or indirectly, from the presence in her body of the fallopian tubes or from their normal functioning or from the influence of these tubes on the other diseased organs.[1] The danger will arise only if pregnancy follows from the free exercise of sexual activity—a pregnancy which may further endanger other already enfeebled and diseased organs. Thus the conditions, in which it is lawful to sacrifice particular organs to the welfare of the whole body, are not verified in the case and, therefore, it is not morally permissible to remove or suppress the healthy fallopian tubes.

THE ENCYCLICAL *CASTI CONNUBII* AND PUNITIVE STERILIZATION

Some time ago a few of us, amateur theologians, arranged to meet occasionally to discuss points of doctrine. The discussions generally have proved so far to be entertaining and stimulating—though sometimes acrimonious enough. Recently, arising out of a book on prison conditions, we had an argumentative session on the whole question of state punishment of criminals. The discussion passed on to the particular issue of the liceity of punitive sterilization. One priest held strongly that sterilization is a lawful punishment for certain forms of crime. He maintained that the text of the encyclical *Casti Connubii* had been amended immediately after publication and that the amendment favours the view that the State may lawfully impose sterilization as a punishment on criminals. But he was a bit vague about it all. He did not produce any references. Most of us had not previously heard of any amendment of the text

[1] The fallopian tubes are merely canals or ducts and, unlike the seminal glands, have no endocrine function.

of the encyclical. We could not find any reference to it in the trarwlations and general textbooks available to us. Copies of the *Acta Apostolicae Sedis,* where doubtless any amendment would have appeared, are not readily accessible, so it was decided to ask you if you would kindly discuss the following points: (i) Has there been any amendment of the text of the *Casti Connubii*? (ii) If there has been an amendment, what is the nature of it? (iii) Does the amendment imply that the State may lawfully impose sterilization as a punishment for crime? (iv) What is the present generally accepted theological opinion on the morality of punitive sterilization?

We feel that a discussion of these questions would be of interest.

Tirones.

The 'amateur theologians' deserve congratulations on their discussions which, we hope, will continue to be stimulating and to give rise to further interesting questions. We shall take the points submitted to us in the logical order in which they have been set forth in the query.

(i) The text of one phrase of the encyclical *Casti Connubii* was amended. The emendation appeared in Fascicle No. 14 of the *Acta Apostolicae Sedis* for 1930. This fascicle bears the same date, 31st December, 1930, as does Fascicle No. 13 in which the full text of the encyclical was promulgated.

(ii) In the text as originally published we read in the relevant section:[1]

> Quin immo naturali illa facultate (generandi), ex lege, eos, vel invitos, medicorum opera privari volunt; neque id ad cruentam sceleris commissi poenam publica auctoritate repetendam vel ad futura eorum crimina praecavenda, licebit, scilicet contra omne ius et fas ea magistratibus civilibus arrogata facultate, quam numquam habuerunt nec legitime habere possunt.

The emendation took this form:[2]

> In superiore fasciculo n. 13, p. 365, lin. 1-2, sententia fortasse magis perspicua evadet, si loco 'eorum' legatur 'reorum' et loco 'licebit, scilicet' legatur 'sed.'

(iii) It is not easy to estimate with certainty the precise significance of die emendation. In the context, the Holy Father was dealing with the false claims made in the name of eugenics, in particular, with the suggestion that the State might legitimately

[1] *A.A.S.,* xxii (1930), pp. 564-5. The English translation of the amended text runs thus: 'They even demand legislation to deprive such persons of that natural faculty by medical action, even against their will. They are not asking the public authority to inflict corporal punishment for some crime that has been committed, or as a preventive measure to forestall future crimes of guilty persons; they arc simply arrogating to the State, against all right and justice, a power which it never had and can never legitimately possess.' London, C.T.S. translation (1943), n. 67.

[2] *A.A.S.,* xxii (1930), p. 604.

sterilize those who arc considered to be likely, by reason of hereditary transmission *of* defect, to generate defective offspring. This suggestion is vehemently rejected and, in the text as originally published, sterilization inflicted as a punishment for past crime or as a preventive of future crime was also declared to be unlawful. In the amended version, this formal declaration was withdrawn.[1] But it cannot, we think, be fairly argued that the withdrawal is tantamount to a statement that punitive sterilization is lawful. At the time when the encyclical was published, as, indeed, at the present time, theological opinion was divided on the question of the liceity of such sterilization. It seems, then, that the Holy Father did not wish to close discussion on an issue which was in controversy among the theologians and that it was this thought, primarily, which prompted the emendation of the encyclical statement.[1] We have seen it suggested that the text was amended because it did not express accurately the intention of Father Hürth—one of the theologians who worked on tjie encyclical. Father Ford writes :[3] ' It is an open secret that Hürth worked on the encyclical, and that Pius XI had so much regard for his mind and intention that when Vatican Latinists failed to give proper expression to it in one important particular, the Pope ordered the passage changed. The *Acta* was already in print and the change was inserted as a special note in the following fascicle. It . . . deals with punitive sterilization.' This suggestion would fit in with what we have written, for Father Hürth is one of the theologians who maintains the liceity of punitive sterilization.[4]* It is our view, then, that the encyclical, as it now reads, cannot be quoted for or against the lawfulness of punitive and preventive[6] sterilization ; this question is prescinded from. As Vermeersch writes :[e] 'The encyclical does not pronounce on these questions. It does not intend either to approve or to condemn such measures.'

[1] ' Textus Encyclicae adductus et publicatus in n°. 13 *Acta Apostolicae Sedis,* 31st Decembris, 1930, etiam sterilizationcm, pro reis puniendis factam, evidenter damnat'—Pujiula, *De Med. Pastorali* (1948), n. 159.

[*] ' Textu sic modificato non apparet rem esse iam definitam vel clare damnatam. Ergo potest adhuc de hac re disputari '—Pujiula, loc. cit.

[0]* Current Theology,' *Theol. Studies,* v (1944), p. 531.

[4] *De Statibus,* n. 728.

[6] Preventive—in the sense that a convicted criminal is sterilized to prevent his future commission of similar crimes.

• *What is Marriage* ?—English translation by Bouscaren, n. 119. Cf. Payen, *Déontologie Médicale,* ŋ. 346 : [e] L'encyclique " Casti Connubii " est muette sur ce sujet. Tout entière à la réfutation du faux eugénisme, elle ne *pose* même pas la question qui nous occupe.'

(iv) We have already mentioned that theological opinion is still divided as to the liceity of punitive sterilization. In all this discussion it is, of course, presupposed that there is question only of punishment for a serious anti-social crime, duly proven. Some theologians hold that the State can impose sterilization as a punishment for such crimes committed in the past, and to prevent their repetition in the future. The main argument for this view is that, since the State can inflict the capital penalty for certain crimes, it can, *a fortiori,* inflict sterilization—a lesser punishment—for similar crimes. Thus, for instance, Father Hürth writes[1]:

Cum tamen auctoritati publicae competat in *malefactores* ius gladii, i.e. ius cruentae punitionis propter crimina gravia, auctoritati publicae non negandum est ius mutilationis etiam quoad organa generativa. Ideoque in poenam criminum gravium auctoritas publica videtur legitime statuere posse castrationem nec non sterilizationem presse dictam.

Other writers deny the force of this argument. They deny the liceity of punitive sterilization because it does not fulfil the requirements, or achieve the essential purposes of punishment.[2] They point out that it is not retributive, corrective, exemplary, preventive, emendatory. Nor is it necessary. It cannot restore to the victim of the crime any loss that has been suffered. It does not inhibit future sex crimes. In fact it leaves the criminal equally capable, and more free, to indulge criminal sexual propensities. There are not wanting efficacious means of punishing anti-social sexual delinquents.[3] Merkelbach, who regards punitive sterility as being within the competence of the State, is forced to conclude:[4]

Sterilizatio, ob causam punitivam, est licita potestati publicae, sed non conveniens, nec perfecte rationabilis, utpote non privans appetitu sexuali.

[1] Loc. cit. Cf. Merkelbach, *Quaestiones de Embryologia et Sterilization,* p. 75: 'Non ergo habet potestas publica ius et dominium *directum* . . . in ius et facultatem generandae prolis . . . nisi ad puniendos malefactores . . . quibus iuste potest ipsam poenam mortis inferre et a fortiori poenam mutilationis.' Italics ours—cf. infra.

[2] Cf. McFadden, *Medical Ethics for Nurses,* pp. 248-9.

[3] Imprisonment or segregation, for instance. Pujiula, loc. cit., sums up the question thus: 'Nobis autem huiuspiodi punitio etiam contra naturam esse videtur. Primum, quia rationi repugnare videtur humanam naturam mutilatione defoedare, nisi propter physicam necessitatem; quia haec mutilatio etiam ad absolutum dominium pertinet. Dantur praeterea alii puniendi modi, quin natura defoedetur. Deinde sequelae, quae hanc mutuationem specialem subsequuntur, immoralitatis effectus practice habent. Nam sterilizatione nec instinctus nec tentationes demuntur. Iniicitur mutilatus vel sterilizatus in quandam peccandi necessitatem. Adde quod sterilizatus, nihil iam timens, ex sexuali commercio cum omnibus fere feminis habenas laxare poterit.'

[4] Op. cit., p. 90.

To these usual and widely expressed criticisms of the suitability and reasonableness and, consequently, of the liceity of punitive sterilization, another argument may possibly be added. Some years ago the Holy Office was asked :

An licita sit directa stcrilizatio sive perpetua sive temporanea, sive viri sive mulieris?

The reply given was :[1]

Negative et quidem prohiberi lege naturae, eamque, quoad sterilizationem eugcnicam attinet, Decreto huius Sacrae Congregationis die 21 Mart. 1931 reprobatam iam esse.

If, then, punitive sterilization is direct sterilization, it clearly falls under this condemnation declared by the Holy Office. We must accordingly ask firstly : what is meant by direct sterilization, and, secondly, does punitive sterilization come under this head ? Direct sterilization means the performance of an act or surgical operation, the sole immediate effect of which is the destruction of the powers of generation of a man or of a woman. The sterilization may be intended for its own sake or as a means to some other end.

Stcrilizatio est *directa,* si tamquam effectus immediatus in *se* intenditur (sive ut medium sive ut finis) *sterilitas* ipsius *actus generativi.* . . [2] Omnis sterilizatio deliberate facta, cujus *unicus* effectus *immediatus* est sterilitas actus generativi, est sterilizatio *directa.*

It seems to us to be very tenable that punitive sterilization fulfils the terms of this definition and, therefore, must be classed as direct. The destruction of the powers of generation is the sole immediate effect of the sterilizing operation, an effect which flows from the intrinsic native efficacy of the act. Any other effects attained are secondary to, and dependent upon, the loss of the generative powers. In the Encyclical *Casti Connubii,* following upon the amended passage, quoted above, wc read :[3] ' The public authorities have no *direct* power over the bodily members of their subjects and, therefore, in the absence of any crime or other cause calling for corporal punishment, they can never *directly* injure or attack the integrity of the body on any ground whatever, eugenic or otherwise.' Is it not implied here that sterilization inflicted for crirfle must be described as direct ? Even Merkelbach, in a passage quoted in an earlier footnote,

[1] .4.A.S., xxxii (1940), p. 73.

[2] Hürth, op. cit., n. 722. Cf. Merkelbach, op. cit., p. 70.

[3] C.T.S., London, English translation, n. 69. Italics ours. Here again there is no decision on the liceity of punitive sterilization, which is mentioned only parenthetically in the passage. ' Si^elle mentionne "l'intervention medicale . . . comme châtiment d un crime, c'est uniquement pour rappeler que les eugénistes exagérés ne se placent pas à ce point de vue.' Payentloc. cit.

seems to suggest that punitive sterilization is direct.[1] Father Hürth must, of course, deny that punitive sterilization is direct. But we are not convinced by his reasoning which runs thus :

Quo in casu non habetur sterilizatio *directa,* quia *poena* ut talis non respicit *actum* generativum eiusque finalitatem et efficaciam naturalem ; sed respicit personam et corpus malefactoris, cui mutilatione apparatus generativi malum physicum infligit propter malum morale commissum. Aufert a malefactore *bonum physicum* tam integritatis corporalis quam facultatis generativae effectivae. Ex qua cruenta punitione et mutilatione fluit quidem naturali necessitate etiam sterilitas ' actus generativi,' sed poena ut talis non versatur (neque ex natura sua neque ex intentione punientis) circa *actum ;* versatur immediate circa personam *eiusque* corporis integritatem.

It seems obvious to us that the act is of less importance than the power to act and, therefore, that the destruction of the generative faculty and bodily integrity is much more serious, much more fundamental, than any consequent sterility of the generative act. It is, indeed, against this destruction of a natural faculty and bodily integrity that Pope Pius XI inveighed.[3] So also the vast majority of theologians.

The view most widely held by modern theologians is that punitive sterilization is unlawful. Gasparri seems to have no awareness of any other tenable view. He wrote of the sterilization of criminals :

Societas potest eos iustis poenis punire, non autem eos privare hire disponendi de proprio corpore in ordine ad generandum, in quo a civili auctoritate minime pendet.'

Cappello is completely untouched by doubt :

Quod haec operatio sit illicita, nobis certissimum est.[2]

In Payen we read :[β]

La plupart des moralistes et des canonistes, sinon tous . . . dénient a l'État le droit de stériliser ses sujets, pour les *châtier* de crimes commis, et *prévenir* des crimes futurs.

[1] Op. cit., p. 75. Merkelbach's work was written before the reply of 1940 appeared. Cf. Aertnys-Damen, *Th. Mor.,* i, n. 568. We have argued in another place, and from a different point of departure, that this reply of 1940 docs cover punitive sterilization. Cf. *I. E. Record,* Iv (1940), pp. 507-11. A writer in *Nouv. Rev. Thiol,* t. 67 (1940), p. 330, takes the view that it does not.

[2] Cf. *Casti Connubii,* loc. cit.

[3] *De Mat.* i, 'App. de Vascctomia,' p. 469.

[4] *De Sac.* v, *De Mat.,* n. 376.

[4] Op. cit., n. 346. The argument for the majority view is thus summarized : [β] Ils tirent leur principal argument de la *nature spéciale* de cette peine, qui ôte directement au coupable la libre disposition de son corps en vue de la procréation, et donc le prive d'un droit non seulement naturel, mais soustrait, *par son caractère propre* à tout pouvoir de l'autorité civile. Us ajoutent que l'État n'est point autorisé à imposer à *l'homme* une opération, dont les conséquences sont de le rendre perpétuellement inhabile au mariage, perpétuellement comdamné au célibat, et peut-être exposé à subir, pendant des années, de plus violentes poussées de l'instinct sexuel.' Loc. cit. Cf. Antonelli, *Med. Past.,* iii, p. 437.

THE MORALITY OF ORGANIC TRANSPLANTATION

We have been asked to review a work entitled *The Morality of Organic Transplantation*—a doctorate dissertation submitted to the Theological Faculty of the Catholic University of America. The author is Rev. B. J. Cunningham, C.M.[1] The work treats of a highly technical and modern problem in Moral Theology' and so we feel that a discussion of it here may be of interest to our readers.

The morality of organic transplantation is treated specifically in only a very few of the latest editions of Moral Theology—for the obvious reason that isoplastic surgery is a recently developed technique. But moral theologians generally discuss, and have discussed for centuries, the morality of mutilation; and the transplantation of organs, or of sections of organs, implies mutilation in some degree. Accordingly, Father Cunningham devotes his first chapter to an analysis of the notion of mutilation as given by the theologians—ancient and modern. At the end he formulates his own definition which, he claims, incorporates all the essential elements of the earlier definitions. Mutilations may be grave (major) or light (minor). 'Grave mutilation in the strict sense is present when, either by excision or by some equivalent wounding action, a distinct organ or member of the body is removed or its distinctive function is inhibited totally.'[2] Minor mutilation 'only partially inhibits the functioning of a distinctive organ or member.' Father Cunningham includes as minor mutilations even slight and easily reparable injuries to corporal integrity—although no organ is suppressed or removed—for instance those implied in blood transfusions and skin grafting. These operations are described as minor mutilations or as mutilations in a wide sense.[3] Other writers, however, deny that they are mutilations in any proper sense of that term: 'Ne sont pas, à proprement parler, des mutilations.[4] Father Cunningham's reason for insisting upon the wider meaning of the term will become obvious later. Mutilation may be direct or indirect. It is direct when chosen as an end in itself or as a means to some end; it is indirect when it follows from an act which has another effect, equally immediate in the order of causality,

[1] *The Morality of Organic Transplantation,* by the Rev. Bert J. Cunningham, C.M., A.M., S.T.L. Washington: Catholic University of America Press.
[2] p. 16.
[3] Cf. p. 7, p. 17.
[4] Michels art. 'Mutilation,' *Did. de Thiol. Cath.* xv, c. 2569; cf. Wouters, *Th. Mor.,* i, n. 526.

which is sufficiently desirable to permit the mutilative effect. Surgical operations are direct mutilations.

In the second chapter the traditional teaching on mutilation is outlined. That teaching has been fairly settled in form down the centuries. It is based upon a fundamental truth—a derivative from the fifth commandment—that man has only a limited dominion over his body. The principles were concisely stated by St. Thomas[1] and reasserted by the subsequent theologians in somewhat similar terms. Mutilation is lawful when it is necessary for the good of the whole body. In these circumstances it is really an act of conservation of the body, not of destruction. Theologians are fairly agreed, *pace* Prümmer, that the necessity which justifies mutilation may arise from an extrinsic source (e.g. to free oneself from captivity or threat) as well as from the more obvious intrinsic source (to free oneself from disease). At this point it may be well to quote a passage from the Encyclical *Casti Connubii* which sums up the traditional teaching: 'Christian doctrine establishes, and the light of human reason makes it most clear, that private individuals have no other power over the members of their bodies than that which pertains to their natural ends; and they are not free to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions, except when no other provision can be made for the good of the whole body.'[2] These principles apply to direct mutilation. Father Cunningham notes that theologians, even the older theologians, admit as lawful the piercing of an ear-lobe for adornment or face-lifting—when the sole purpose is beautification. We think they would also readily permit for the same purpose, say the removal of protruding, though perfectly sound teeth. Modern theologians describe as acts of charity the operations necessary to provide blood for transfusions or skin for grafts—when they are done for the good of the neighbour. But let us recall that these operations are not called mutilations usually.[3] They are so called by Father Cunningham: they infringe upon bodily integrity; they are minor mutilations; they are direct mutilations.

The most interesting and valuable sections of the work under review are chapters three and four. In chapter three we are given some details, derived from expert sources, of the surgery of organic transplantation. It is made very clear

[1] *S.T.* 2, 2, q. 65, a. 1.
[2] C.T.S. translation, p. 33.
[3] Cf. Noldin, *Th. Mor.*, ii, n. 328; Jorio, *Th. Mor.*, ii, n. 198.

that many homologous transplants have been sueccssfully performed—in particular ovarian and corneal transplants—so that the question of their morality remains no longer in the realm of theory. As we noted earlier, the moral aspects of the recent developments of isoplastic surgery have not as yet been fully considered. Moralists have indeed been aware of, and have roundly condemned the VoronofT operation, at least in its cruder forms and by reason of its purpose.[1] Incidentally, Father Cunningham dismisses VoronofT very summarily by simply quoting a medical judgment on his work—to wit:[2] 'Neither ovarian nor testicular transplants from simian donors arc effective means to the restoration of sexual vigor.' But VoronofT and his associates advocated testicular transplants from man to man[3]—and not merely from simian donors. On his principles Father Cunningham should, and in fact does,[4] admit the liceity of transplants of testicular tissue. But this matter is treated very briefly because isoplastics involving male sex organs are comparatively rare and the testicular tissue has not been, and need not be, implanted in the natural *situs* of the testicle. Implantation elsewhere in the body suffices to obtain the required hormonic value of the gland.

The surgical history of the cases quoted is most interesting and the results achieved are remarkable. For instance, there is the case of two sisters who suffered from complementary ovarian dysfunction. One suffered from amenorrhea, the other from hypermenorrhea. The recognized therapy failed to correct these conditions. The surgeon decided to perform a transplant whereby part of an ovary taken from each girl would be interchanged. The operation was successfully performed. The subsequent history' of the cases showed that there was perfect coaptation : the grafts were healthy, and normality of function and health was restored to both girls. Interchange of ovarian grafts, in cases of complementary dysfunction, is not the only kind of ovarian transplant that has been successfully and beneficially performed. The grafting of part of a healthy and normal ovary—provided by a donor—has cleared up other pathological conditions.[6] Up to the

[1] Cf. Antonelli, *Medicina Pastoralis,* ii, p. 89.

[2] p. 49.

[3] Cf. Antonelli, loc. cit., and Jorio, op. cit., n. 200.

[6] Father Cunningham discusses briefly a problem which is connected with ovarian isoplasty. If after this operation a woman became pregnant, would

present, entire organs have not been transplanted. But such transplantation seems to be surgically possible, at least in the case of the endocrine glands. The moral problem remains basically the same whether there is question of transplanting part of an organ or the whole organ. A donation of tissue involves mutilation—whether part of an organ or the entire organ is removed.

Father Cunningham refers briefly to corneal transplants (keratoplasty). We had read elsewhere of the wonderful success of this new surgical technique for the cure of blindness when it is due to the opacity of the cornea. Portion of the opaque cornea is removed—to make a window—and a portion of healthy transparent cornea is grafted into its place so that light is admitted to the eye and sight is restored. These operations have been successfully performed in a very large number of cases. One surgeon is recorded as having done five hundred of them with ninety per cent success. Once the success of the technique was established, there followed a tremendous demand for healthy corneas. 'Eyebanks' have been established in the United States to meet this demand. The corneas are provided principally by the removal of the eyes of the newly dead. Sometimes, too, it may be necessary by reason of some other eye disease to remove an eye with a healthy cornea. This cornea can be used for transplants. We have read that the response in the United States to the request for healthy corneas has been astounding; that many people volunteered to leave their eyes after death for this purpose; that many offered the eyes of still-born infants. As a consequence the eye surgeon in America to-day, unlike his predecessor, is not hampered or delayed by lack of healthy tissue for corneal transplants.

In his final chapter, Father Cunningham comes precisely to the important question of the morality of homologous transplants. Noldin[1] and Jorio[2] are the only theologians who discuss the question at any length. A few others refer to it very briefly. Noldin and Jorio regard organic transplantation as a violation of the fifth commandment and therefore as intrinsically unlawful. Man has only a limited dominion

she be the mother of the child if the ovum fertilized came from the transplanted ovary? It is said by doctors that ovaries contain from birth, at least radically, all the ova discharged between puberty and the menopause. Yet it can be held that the source of the blood supply is the vitally important factor and that, therefore, the pregnant woman is the mother in the truest sense.

[1] Loc. cit. [2] Loc. cit.

over his life and bodily members. Briefly their main argument is that, just as it is unlawful to kill oneself directly for the sake of one's neighbour, so it is unlawful to mutilate oneself directly for his sake. Father Cunningham does not agree with the conclusion, or with the argument, of these theologians. They are, he maintains, illogical, Jorio particularly so. For he lays it down as a fundamental principle that whatever one may lawfully do for one's own good may also be done, under the same circumstances, for the good of the neighbour. From this principle, according to Father Cunningham, one may logically conclude to the liccity of direct mutilation for the good of the neighbour—a conclusion which Jorio rejects. But it seems to us that, in accusing Jorio of illogicality, Father Cunningham has not taken sufficient account of the phrase 'under the same circumstances' which qualifies the fundamental principle, and in which Jorio might well take refuge.

Father Cunningham's thesis—against Noldin, Jorio and others—is that[1] 'it seems a sufficiently probable opinion that homologous transplantation of the organs, or sections of organs, from one person to another is licit and commendable, though not of obligation.' The basic arguments for this thesis are derived from the following considerations: the unity of the human race; the consequent ordination of men to society and to one another; the ordination of men to one another as members, actual or potential, of the mystical body of Christ—an order of member to member, of body to body, on both supernatural and natural bases;[2] the precept of charity whereby it is lawful for men to do for others what they may do for themselves. These considerations are developed at length. The argument from the unity of the human species, used by St. Thomas[3] to explain how all men sinned in Adam, is invoked as a basis for the contention that mutual help, even to the extent of direct mutilation, is lawful. Vermeersch justified skin grafts and blood transfusions on similar grounds and asks, somewhat rhetorically[4]: 'Must there not be admitted some order of our members to the body of the neighbour?' If the unity of the human race, and the consequent ordination of its members, provide a valid argument to justify blood transfusions, etc., they also justify graver mutilations done out of charity for the neighbour. The same basic principles are at

[1] p. 71.
[2] Cf. p. 86.
[3] *S.T.* 1, 2, q. 81, a. 1.
[4] *Th. Mor.*, ii, n. 323.

stake in all direct mutilations. That is not to deny that the graver the mutilation, the more important must be the cause sufficient to justify it.

Father Cunningham counters the objection, that his thesis contradicts the teaching of reputable authors, by saying that theologians have not as yet fully considered the morality of modern isoplasty. Even Noldin and Jorio had principally in mind the Voronoff operations—which, having been medically discredited and associated with a gross purpose, placed all transplants under suspicion. Father Cunningham denies that his thesis contradicts the traditional teaching on mutilation, when this teaching is considered in relation to the obligations of fraternal charity. There is an order of charity—an order of goods and an order of needs. While men are bound to conserve their lives by every reasonable means, the traditional teaching admits that one may expose oneself to certain danger of death for the sake of the neighbour—or as St. Thomas has it—for the sake of the virtue involved in this act. Here, of course, death is an indirect effect. But the point is that, under certain conditions, a man may omit the conservation of his life for the good of the neighbour. Father Cunningham's argument is that, for a similar reason, one may undergo direct mutilation—because the loss of a member is a lesser evil than loss of life. That is to say, indirect suicide being the greater evil, it is logical to conclude from its liceity in certain circumstances to the liceity, in similar circumstances, of direct mutilation—the lesser evil. Theologians who do not permit mutilation for the good of the neighbour approach the question from the opposite direction. As we noted earlier, they institute a parallel between direct suicide and direct mutilation: the former is not allowed for the good of the neighbour, neither is the latter. But the parallel is far from perfect, because direct suicide is never lawful, whereas direct mutilation is regarded as lawful by all when it is necessary to conserve the whole body. It is urged against the lawfulness of organic transplantation that the conditions which justify the placing of an act of two effects, one good, the other bad, are not verified. The good effect is less immediate: it is obtained through the evil. But it seems to us that isoplasty cannot be ruled out on that ground alone. If it can then we must also reject as unlawful the amputation of a gangrenous limb—because here, too, the good effect is obtained through the bad. We are in agreement with Father Cunningham's view that surgical operations (performed to remove an organ or part of an organ or to suppress

its function) must be classed as direct mutilations—in the sense among others, that they are chosen as means to an end. Our author frequently returns to the admission of theologians that blood transfusions, as an expression of fraternal charity, are lawful. If blood transfusions, which in his view involve direct though minor mutilations, are lawful, then there is nothing in the theological teaching against the principle of direct mutilations for the good of the neighbour. Why not, then, for a proportionate cause, allow major mutilations? 'Majus aut minus non variant speciem.'[1] But is this argument valid against those theologians who hold that blood transfusions are not mutilations in any proper sense; that there is only mutilation when a portion of the body which has an organic function is suppressed or removed; that therefore, the injury involved in a blood transfusion is *specifically* distinct from that of mutilation?

The conclusion of Father Cunningham's dissertation is: 'a *Per se* operations which involve the transplantation of organs or of sections thereof are licit; they involve no opposition to the natural or supernatural moral law.' Again the argument briefly runs: It is admitted by all that direct mutilation is lawful, if it is necessary for one's own good. By reason of the unity of the human race, as explained above, and by the law of fraternal charity, direct mutilation for the welfare of the neighbour must also be lawful. For it is permissible to do for others what one may do for oneself. Add to this the fact that theologians do allow direct mutilations of a minor kind. Major mutilations should also be permitted since 'majus aut minus non variant speciem.' But if these arguments are valid, where is one to draw the line in making sacrifices in this matter for the neighbour? Is there any logical reason why we should stop short of killing ourselves directly—if even there—provided the good of the neighbour requires it?[2] Father Cunningham, however, will not concede the liceity of organic transplants in all cases. There are two exceptions to his conclusion—exceptions based on traditional teaching, and upon an authoritative interpretation of the natural law. The first exception is that a man may not allow direct mutilation of himself for the good of the neighbour if the operation would certainly, or very probably, cause his own death. 'If there

[1] Would these arguments, of themselves, logically demonstrate the liceity of voluntary euthanasia—say in the case of one dying from a highly contagious disease in circumstances where contact is unavoidable.

is a true and solid probability of his dying as a result of the mutilation, then we cannot admit the liceity of that operation no matter what good might accrue to the neighbour as a result of it. Man does not have that sort of dominion over his own life.'[1] It may be asked: would it be lawful for a man to undergo an operation which would very probably cause his death when there is a chance that the operation might successfully relieve a painful and highly dangerous condition?[2] And if one may undergo such an operation for one's own sake but not for the neighbour—what has become of the principle that whatever one may do for oneself may also be done for the neighbour?

The second exception made by Father Cunningham is that, if donation of an organ for an isoplast would involve sterility for the donor—this donation is unlawful.[3] It is a directly sterilizing mutilation. And direct sterilization was condemned as contrary to the natural law in a decree of the Holy Office in 1940.[4] Yet if a directly sterilizing operation—say the removal of tubercular testicles or a double vasectomy—is necessary to save one's own life or health, it may lawfully be undergone. Here again we ask: what has become of the principle—dear to Father Cunningham—that one may lawfully do on behalf of the neighbour whatever one may do for oneself? Of course, we do not, for one moment, question the necessity of making these exceptions. But there is no escaping the fact that this necessity constitutes a grave difficulty against our author's argumentation. For the exceptions do not flow from his principles. On the contrary, they are thrust upon him by traditional moral teaching, and by the Church authority. We must, indeed, be very chary of general principles which lead to unacceptable conclusions. A qualifying phrase like that of Jorio, 'under the same circumstances,' might be a saving grace.

At the same time we confess that we are greatly attracted to Father Cunningham's conclusion—with its reservations. There are difficulties, however—some of which have not been touched upon in the dissertation. How, for instance, can the conclusion be aligned with the statement from the Encyclical *Casti Connubii,* quoted earlier? Is it Father Cunningham's

[1] p. 101.

[2] To recall a phrase of our author's: doesn't a man have that sort of dominion over his own life—when it is for his own good?

[3] The surrender of one testicle or of one ovary does not bring about sterilization.

[4] Cf. *A.A.S.,* xxiii, p. 118.

solution that, in the phrase 'for the good of the whole body', the 'body' means the social, as well as the individual, body[1]? We see no difficulty in admitting the liceity of corneal transplants when the healthy membrane is provided in the usual manner—that is, from the dead. There is no question of mutilation then. If we are asked regarding the liceity of a donor sacrificing the sight of one eye to provide a healthy cornea for a neighbour—we reply, with Father Cunningham,[2] that we think that the sacrifice can be justified, provided there is a proportionate compensating cause. Which brings us to the point that, in our opinion, Father Cunningham has not sufficiently considered this element of proportionate cause in estimating the morality of organic transplants. If we may introduce here terminology dear to us, we would say that direct mutilation is lawful, provided the subordination (the sacrifice of one entity to another) is due, and provided there is a compensating cause. There is obviously due subordination when a limb is sacrificed for the necessity of the body. A part is sacrificed for the good of the whole. And one may, within limits, duly subordinate his own good to that of his neighbour—as is illustrated, for instance, by the liceity of giving blood for a transfusion. The order of charity (of goods and needs) helps to decide when subordination is due. But even when subordination is due, there must also be a proportionate compensating cause. The good must outweigh the evil. Good and evil are to be estimated in the social, as well as in the individual spheres, in the moral as well as in the physical spheres—and the degree of probability of the good and evil must also be taken into account.[3] Thus the necessity of verifying this compensating cause may help to explain the exceptions which Father Cunningham found himself forced to make.

[1] This solution was rejected by Pope Pius XII in an address on corneal transplantation of 14 May, 1956. The Pope discussed formally only the religious and moral aspects of the transplantation of the cornea from a dead body to a living person. Such transplantation is lawful, always providing that due respect is shown for the human corpse and for the rights and sensitivities of relatives in its regard. In the course of his address Pope Pius raised incidentally a number of connected problems.

[2] p. 104.

[3] Father Cunningham does mention, in justification of his second exception, the danger of abuse in any infringement of the sex powers, which are specially sacred and have a special reference to the common good. Man's rights over his sex powers and members are even less than his restricted dominion over other members. Cf. p. 103.

DIRECT AND INDIRECT ABORTION ECTOPIC PREGNANCY

A *parochus* attends an hospital in his parish in which he thinks operations to procure sterility or abortion are performed. But he meets as facts : (1) A pregnant Catholic woman suffers from a tumour and an operation is necessary. Since it is certain that the ejection of the foetus will follow the operation, the uterus should be emptied before the operation and thus make it easy. (2) A consumptive prospective mother in order to be saved must have her lung deflated. But to do this the foetus must first be removed.

The *parochus* discovers that a difference of opinion exists among theologians regarding the liceity or otherwise of the excision of an ectopic or extra-uterine foetus, and therefore observes a prudent silence.

(1) What is direct and indirect abortion ? When is indirect permitted ? (2) In the application of the principles should there be a distinction made between uterine and extra-uterine pregnancy ? (3) If the *parochus* should have spoken, what should he have said on the two cases in point ?

Interested.

Our correspondent's letter raises so many questions that, to answer them, we must discuss the theological teaching on abortion at some length. But the subject is important and the discussion will, we trust, be of interest to our readers.

During the period of pregnancy the child is attached to its mother's body by a membranous system and by the umbilical cord. Abortion is the separation of a living non-viable fœtus from its mother. This internal separation is followed by the external ejection of the fœtus from the body of the mother. The separation and subsequent ejection may arise from natural causes which are out of human control. Or the separation and ejection may be caused intentionally by artificial means. This latter procedure is described technically as *procuratio abortus*—and it is with this intentional abortion we are concerned here. If the fœtus is not living, the ejection of it is not abortion. If the fœtus is viable, that is, capable of living outside its mother—which is generally true in the last two months of the period of gestation—the ejection of it is not abortion, but what is called *acceleratio partus*,[1] premature birth—which, we can say in passing, may lawfully be procured, even directly, for a sufficiently grave reason.

[1] Cf. Bonnar, *The Catholic Doctor,* Cf. Vermeersch, *Th. Mor.,* ii, n. 661.

Abortion may be procured directly or indirectly. It is procured directly, when the separation and ejection of the fœtus is the direct or immediate result of the actions performed or the means employed, that is, when the abortion follows primarily and naturally from those actions or means. It is indirectly procured, when the actions or means from which it results, have another more primary and more immediate effect, that is, when the abortion is only the secondary effect. This distinction between direct and indirect effects is very common in Moral Theology and Ethics—but, unfortunately, it is not always very clear. The distinction does not depend upon the intention of the agent—though, of course, the intention is a very important factor in determining the formal morality of the act, as we shall mention later in connection with indirect abortion. The distinction depends rather upon the nature of the act and of its causality, and upon the immediate result produced—not upon the ultimate effects. What is reached naturally by the intrinsic native efficacy of the act is the direct result. What is beyond that is indirect.[1]

To act directly upon the living, non-viable fœtus to secure its separation and ejection is direct abortion. We must include under the term 'fœtus' the complete fœtal unit, that is, the embryonic child with the amniotic sac, the placenta and the umbilical cord, which surround and protect it, and by which it is attached to its mother and receives its nourishment. Therefore an operation to excise from the fœtal sac the living non-viable fœtus is direct abortion. So is an operation by which the placenta or the umbilical cord is severed, or the amniotic sac perforated. In all those cases the action terminates primarily in immediate injury to the fœtus, bringing about its separation and ejection—though, of course, the act may have, secondarily, other effects.[2]

The taking by a feverish, pregnant woman of medicinal drugs which are compounded to lower the temperature might have the secondary effect of causing abortion.[3] But in this case the abortion is indirect. The removal by operation of a benign tumour from the womb of a pregnant woman might be followed by abortion which, presupposing that the fœtal unit is not immediately interfered with, is indirect. Again, the complete excision of a diseased womb which endangers the mother's life, but which contains a living non-viable fœtus

1 Cf. Merkelbach, *Quaestiones de Embryologia.*
2 Cf. Merkelbach, op. cit.
3 Cf. McDonald. *Principles of Moral Science.*

is indirect abortion. In those cases the removal of the fœtus is the secondary, not the primary, result of the action performed.

Direct abortion is never lawful. It is the direct killing of an innocent human being, which no cause can justify. The allegation that, in certain circumstances, in particular those of ectopic gestation, the child might be regarded as a materially unjust aggressor, is no longer made by theologians. 'Who would call the innocent child an unjust aggressor?' was the rhetorical question asked by Pope Pius XI in his encyclical *Casti Connubii.* We add here, to forestall an objection, that even if it were proven beyond all reasonable doubt, that, for a period of time after conception, the human fœtus, while biologically vital, is not endowed with a rational soul, it would still remain true that the direct abortion of this non-animated fœtus, if there be such, would be intrinsically wrong and forbidden by the law of nature. We consider that the weight of probability is in favour of the theory of immediate animation. Even those who take the other view will at least admit that their theory of mediate animation is not proven beyond reasonable doubt, and, therefore, that the fœtus *may* be animated from the moment of conception. To destroy directly what is possibly a human being is subjectively homicide. Objectively, if the fœtus is not animated, the destruction of the fœtus is not homicide—but it is definitely prohibited by the natural law.[1]

English law is not concerned so much with direct and indirect abortion. It has another distinction between therapeutic and criminal abortion—a distinction which was very much discussed in a case before the English courts. Therapeutic abortion is that directly or indirectly procured to save the life, or to prevent serious danger to the health, of the mother.[2] In all other cases abortion is criminal. It is a felony. Needless to say, Catholic teaching condemns direct therapeutic abortion in every circumstance. It was formally condemned as far back as 1895 by the Holy Office. The encyclical *Casti Connubii* also refers specifically to it.

Indirect abortion may be permitted if there is a sufficiently grave reason for the placing of the cause from which the abortion follows as a secondary effect. The abortion, though secondary, is an effect of the action—an evil effect for which there must be a compensating cause. There is here the application of the well-known theological principle regarding

[1] Cf. Bouscaren, *Ethics of Ectopic Operations,* p. 57, where it is said to be, in the hypothesis of mediate animation, a sin against the Sixth Commandment.
[1] Cf. Bonnar, loc. cit.

an act which has two effects. The principle might be applied to indirect abortion thus: 'It is lawful to place an act from which abortion follows indirectly, provided there is a just and proportionate cause for permitting this evil effect, provided it is not intended, and that every care is taken to prevent it.' The abortion is indirect; therefore the good effect is not obtained through the evil; there is no subordination. The intention must be good. There must be a proportionately grave cause for permitting the evil. The evil is a serious one. It means the death of what is actually, or, even in the theory of mediate animation, will soon be, a human being, and therefore the cause must be a really grave one. So it would be lawful for a pregnant woman to take medicinal drugs to allay a serious fever even though abortion may follow. It is lawful, in order to save the life of the mother, to excise a diseased womb which contains a living non-viable fœtus; but it would not be lawful to perform this operation to save the mother the pains of parturition.

Conception, from which the beginning of the state of pregnancy dates, occurs when the male sperm enters and fertilizes the ripe ovum. This conjunction of the male and female elements takes place, as a rule, somewhere in the Fallopian tubes. Normally, after the union, the fertilized ovum moves into the womb of the mother where it develops and matures. So the normal pregnancy is uterine. The fertilized ovum, that is the fœtus, attaches itself to, and penetrates slightly into, the wall of the womb. The membrane of the womb reacts appropriately, and gradually a complex physiological system grows and develops—for the covering, protection and nourishment of the child.[1]

But pregnancy may develop outside the womb, in which case we speak of extra-uterine or ectopic pregnancy and gestation. The fertilized ovum, instead of implanting itself in, and attaching itself to the wall of the womb, implants itself in some other organ. Many medical reasons are advanced to explain the failure of the fertilized ovum to reach the womb—which is its natural *situs*. Whatever about the validity of these reasons, the fact that the fertilized ovum does not in every case reach, and implant itself in, the womb is abundantly clear. The situation of the ectopic pregnancy is nearly always, we are told, the Fallopian tubes. Both abdominal and ovarian pregnancies have taken place, but it is pointed out that these,

[1] Cf. Bouscaren. Bonnar, Merkelbach, op. cit. and Antonelli, *Medicina Pastoralis*, t. 1, n. 240 et seq.

especially the abdominal cases, are probably secondary forms resulting from a primary tubal pregnancy after the rupture of the tube. Hence ectopic pregnancy is for the most part synonymous with tubal pregnancy.[1]

To the question as to whether a distinction must be made between uterine and ectopic pregnancy in applying the principles we have laid down regarding abortion—the answer is in the negative, with possibly a slight reservation to be explained later. Direct abortion is always wrong—no matter where the foetus is located. To act directly upon it or upon the foetal unit—the amniotic sac, placenta or umbilical cord—and thus separate and eject the foetus from the mother's body is always and in every case intrinsically wrong, so that no cause can justify it. But, as in the case of uterine pregnancy, the causing of the indirect abortion of an ectopic foetus may be permitted for a sufficiently grave cause, as explained earlier. Thus it would be lawful to operate on a dangerous external tumour on the Fallopian tube even though such an operation might be followed by indirect abortion. So, too, if a Fallopian tube is so seriously diseased that it is a danger to the life of the mother, it may be lawfully excised even though it contain a living non-viable foetus. Again it would be lawful in order to stop a severe tubal hæmorrhage, dangerous to the mother's life, to excise the tube containing the foetus. And, in the same circumstances, it would be lawful to use haemostatic forceps to clamp the arteries leading to the tube—even though this action would result in the stopping of the blood supply and, thereby, of the necessary nourishment to the child—and hence in its death. Severe and dangerous haemorrhages are common at a certain stage of tubal pregnancy. They are due to the growth of the foetus, and its inroads upon the tissue of tubal wall, which lead normally to its rupture.

Thus far there is agreement nowadays among theologians. They all agree that the direct separation and ejection of any and every living non-viable foetus is absolutely wrong in every case. They agree equally that the indirect removal of a similar foetus may be permitted if there is a sufficiently or proportionately grave cause. Generally the cause alleged is the grave danger to the life of the mother by reason of a cause other than the pregnancy, by reason of the severe disease of the organ in which the foetus is situated.

But the question is asked whether the fact that a fœtus is

[1] Cf. Bonnar, op. cit.; Jellet, *A Short Practice of Midwifery*.

situated in the Fallopian tube may be regarded as constituting a pathological condition of the tube—even before, of itself the actual rupture and severe haemorrhage, to which we have referred, takes place. All agree, that once the haemorrhage has actually taken place, it is lawful to clamp the arteries and to excise the tube, for the abortion is indirect, and presumably is not intended, and there is a sufficient cause. But, prior to the actual haemorrhage, is the tube diseased? May it be regarded as so diseased that it constitutes a grave danger to the life of the mother and, therefore, may it be excised even though it contains a living non-viable fœtus? Many theologians reply in the affirmative. Fr. Bouscaren, S.J., in his excellent work on the *Ethics of Ectopic Operations,*[1] adduces many arguments for this affirmative reply. He declares that it is not true to say that a tube containing a pregnancy is a sound tube. If it be objected that any unsoundness is due to the pregnancy, to the fœtus, it can be replied that while it is true that the unsoundness was caused by the pregnancy it is now something distinct from it. Causally it resulted from the pregnancy, but it is entitatively distinct, here and now, as a pathological condition. Dr. Bouscaren quotes abundant medical evidence to show how adversely the presence of the fœtus affects the tube—adverse effects which have no parallel in normal uterine pregnancy because the wall of the uterus, unlike that of the Fallopian tube, is fitted by nature to meet the inroads of the fœtal unit. The actual rupture and haemorrhage are only the last stages of a process in which the tubal wall has been gradually weakened and disintegrated. Therefore, concludes Fr. Bouscaren, ' while originally and remotely it is the pregnancy (the fœtus) which causes the danger, finally and proximately, that is, here and now, in many fairly advanced cases of tubal pregnancy, even before the rupture of the tube—it is the tube itself.'[2] Now if the tube itself is regarded as here and now so diseased as to be dangerous—no matter from what cause the disease has arisen—it may be excised even though it contain a fœtus, just as one might lawfully excise it, if it contained no fœtus. It must be remembered that the state of the tube, here and now, must constitute a present danger—not merely a future danger—to the life of the mother. For only in these circumstances will there be a proportionately grave cause for permitting the destruction of the fœtus.

If the medical facts adduced by Fr. Bouscaren in regard

[1] Especially in chap. V, pp. 88 et seq.
[2] p. 162, op. cit.

to the pathological condition of the tube in the case of tubal pregnancy be admitted, if, that is, it be admitted that the tube itself is really unsound, then this author's general conclusion, that the excision of the tube is indirect abortion and may be lawful, is valid. And the reservation referred to above might be made that while one may, for a proportionately grave cause, excise a tube containing a living non-viable fœtus though there is no disease, apart from that caused by the presence of the fœtus, and its inroads into the tubal wall—one might not lawfully excise a womb in similar circumstances. Perhaps it will be said, and it may be true, that similar circumstances are not possible in the case of uterine pregnancy. While it may be admitted, and the medical evidence seems to warrant the admission, that the fœtus may *cause,* prior to the rupture, a pathological condition, dangerous to the mother's life, in the Fallopian tube, which condition is here and now entitatively distinct from the fœtus, and which justifies the excision of the tube—can it be admitted that a similar situation may arise in the case of uterine pregnancy, that is, that the fœtus itself could *cause* a pathological condition of the womb, which condition might be regarded as here and now entitatively distinct from the fœtus, and might therefore warrant the excision of the womb containing the fœtus ?[1]

Some theologians disagree with Fr. Bouscaren's conclusions. They invoke two decrees of the Holy Office. In 1898 the question was asked : 'Is laparotomy lawful when there is question of extra-uterine pregnancy, or ectopic conception ?' And the reply was : 'In urgent necessity laparotomy to remove ectopic foetuses is licit provided serious and opportune provision is made for the life of the mother and child.' We would recall that our discussion concerns the removal of a non-viable fœtus. A further question was submitted in 1902. It reads : 'Is it ever lawful to extract immature ectopic foetuses before the sixth month after conception ?' The reply was : 'No, in accordance with the decree of 1898 which demands that serious and opportune provision be made for the life of the child and the mother. Let the petitioner remember that this decree declared regarding the time that no hastening of birth is licit unless it be achieved at a time and in a manner in which, according to ordinary contingencies, due consideration is

[1] It has been said that the case for the excision of the pregnant tube rests on a parallel with the case of a diseased uterus. Bouscaren rejects the parallel. Cf. Father Davis, S.J., in the *American Ecclesiastical Review,* September-October, 1927.

taken for the life of the mother and fœtus.'[1] But it is justly-maintained that these decrees refer to the removal of the ectopic fœtus directly—not to its indirect removal by the excision of the tube with its contents.

We agree with Fr. Bouscarcn's general conclusion. But we think that he goes too far in some of the applications which he makes of it. In theory he steers admirably a middle course between the contention that excision of the tube is lawful only after rupture has taken place, and the contention of the majority of medical authorities that, whenever an ectopic pregnancy is discovered, the tube may be removed immediately. Fr. Bouscaren demands that there must be a present danger—from the tubal condition—to the mother's life. Otherwise there is not a proportionately grave cause present. In estimating that cause 'the principal consideration will be the necessity of the operation to save the mother from present imminent danger to her life.'[2] Later he says there is a sufficient cause when there is 'a notably greater probability of saving the mother's life by the present excision of the tube.'[3] And so when, after the discovery of the ectopic pregnancy, the mother cannot be kept under medical observation, or when the presence of the ectopic pregnancy is discovered when the abdomen is opened for some other operation—he will allow the immediate excision of the tube, if by doing so the probability of saving the mother's life is notably increased. Fr. Bonnar, O.F.M., expresses this view in even wider terms.[4] In cases of advanced ectopic pregnancy—where there is a likelihood of the fœtus reaching the stage of viability—if not its full term—Fr. Bouscaren would demand a proportionately greater degree of present danger to the mother's life before allowing the excision of the tube.

Surely there must be a stage of ectopic pregnancy—which may be discovered on the occasion of another operation—at which the tube is not here and now diseased, at which it docs not constitute a present imminent danger to the mother's life. We prefer, therefore, to say with Fr. Merkelbach, O.P., that the excision of the tube containing a living non-viable fœtus is lawful, when it is highly probable from present indications that the state of the tube constitutes such a danger to the life of the mother that she can be saved only by this

'These decrees are quoted by all the writers on this question. They arc to be found in Gasparri, *Fontes luris Canonici,* vol. iv, n. 1199 and Denz.-Bann., n. 1890c. The decree of 1902 was never expressly approved—but this was not necessary, as there is question of a declaration of the Natural Law.

[1] op. cit., p. 165.
[2] op. cit., p. 168.
[4] op. cit., p. 89.

excision.[1] We agree, however, that this danger may be present before actual rupture takes place.

In reply to the more specific questions of 'Interested' we must point out that, on the evidence submitted, in the two cases mentioned there seems to be question of direct abortion of uterine foetuses. We take it that in both cases there is question of a living non-viable fœtus. In the first case the phrase 'to empty the uterus' means apparently to cause direct abortion as does the phrase 'the removal of the fœtus' in the second case. And we might add that there is not question in either case of ectopic pregnancy—though this point would not, if there is question of direct abortion, make any difference. The *parochus* could not, therefore, if he were bound to speak, justify his prudent silence because he discovered disagreement among theologians about the liceity of the excision of an ectopic fœtus. There is no disagreement among theologians regarding the non-liceity of the direct abortion of any fœtus. We have explained the point at which theologians begin to differ on the question of indirect abortion. The fact that, in the first case mentioned by 'Interested,' abortion will certainly follow indirectly, does not justify making it the direct object of an operation. In both cases the operations suggested are necessary to avert grave danger to life and would, therefore, be lawful even though they would certainly be followed by indirect abortion.

Is the *parochus* bound to speak? If there are Catholic patients, doctors or nurses in this hospital which is under his charge he should explain to them the Catholic teaching and their duties. Doctors and nurses should be informed of their obligations regarding the performance of, or co-operation in, illicit operations.[2] They should also be instructed regarding their obligation to baptize immediately all living foetuses—no matter at what period of pregnancy they are delivered.[3] The *parochus* should also give an explanation of the Catholic position to non-Catholic doctors and nurses—in order that they might respect the conscience of Catholics in these matters—if there is any reasonable hope that his doing so may be of any avail. If, in the hospital, doctors and nurses do not respect the principles of Catholic patients, he should warn his parishioners not to attend it—especially in illness which might be relieved by illicit treatment or operation.

[1] op. cit., pp. 56 et seq.
[2] Cf. Davis, *Moral and Pastoral Theology,* i, p. 347.
[3] Cf. c. 743 and c. 747.

PENALTY FOR CO-OPERATION IN ABORTION

In the *Compendium of Moral Theology,* by Tummulo-Jorio (Ed. 1936, vol. ii, Supplement, n. 964), the view is defended that the co-operators (except the *mandans)* do not incur the excommunication of which there is question in canon 2350, § 1. The argument is that in the former legislation a clear distinction was between principal causes and co-operators, whereas in the present law there is no mention of the latter. If this mild view is correct, or even probable, several classes of persons will not incur the penalty, contrary to the commonly accepted view since the Code came into force. As the point is of such great importance would you kindly say whether Jorio's teaching has sufficient support to justify its being followed in practice ?

Paul.

We have not the edition of Tummulo-Jorio mentioned by our correspondent. The view to which he refers, however, is also defended in the sixth edition[1] (1939).

We do not think that Jorio's view may be followed in practice. In our opinion it is neither 'correct nor probable.' We know of no other author who regards this view as probable.[2] It seems perfectly clear to us from a consideration of canons 2350, § 1, 2231, 2209, §§ 1-3,[3] that not only the principal agents in the crime of abortion, *effectu secuto,* but all the *necessary* co-operators, as well as the *mandans,* incur an excommunication, *latae sententiae,* reserved to the Ordinary.[4] The arguments given by Jorio to support his view are, we think, of no convincing value.

Canon 2231 says that 'if several persons concur to perpetrate a crime, even though only one is named in the law, all who are mentioned in canon 2209, §§ 1-3, are liable to the same penalty—unless the law expressly declares otherwise.' Jorio[5] seizes upon this last clause and says that canon 2350 expressly, though only implicitly of course, declares otherwise. His reason for this statement is that, in pre-Code legislation, a distinction was clearly made between the principal agents in the procuration of abortion, and those who merely co-operated. The former incurred the penalty of excommunication :

[1] Vol. ii, n. 513.

[2] Cf. Prümmer, Wouters, Davis, Gènicot, Woywood, Vermeersch, Noldin, Cocchi, Wernz-Vidal, Raus, Coronata.

[3] 'Si delictum sine eorum opera commissum non fuisset,' Canon 2209, § 3.

[4] Canon 2350, § 1, reads : 'Procurantes abortum, matre non excepta, incurrunt, effectu secuto, excommunicationem latae sententiae Ordinario reservatam.'

[5] Loc. cit., ad calc.

the latter did not.[1] Canon 2350 makes no such distinction. It refers generally to 'those who procure abortion.'[2] Therefore, Jorio concludes, the canon expressly declares that co-operators are not liable for the penalty! A strange meaning, surely, of 'expressly declares'! And if canon 2350 makes no distinction, neither should we. The argument cuts both ways. While it is true that this canon does not make explicit reference to co-operators, the word *procurantes* must clearly be interpreted in the light of canon 2231, which states the general principle for determining the extent of liability to penalties.

If Jorio's contention that an express exception is implicitly contained in canon 2350 were true, he need not have troubled to add that canon 2209, §§ 1-3, was not pertinent. The argumentation is amazing. Canon 2231 apparently is relevant—Jorio argues from a clause in it. But this canon explicitly invokes canon 2209 to supplement its teaching. It seems to follow that if canon 2231 is relevant, so also is canon 2209 as quoted. In fact Jorio uses canon 2209, § 3, in this same context! His reason, given in a footnote, for rejecting its relevancy, is passing strange. Canon 2209 deals, he says, with the imputability of crime, whereas in canon 2350 there is question of incurring a penalty. But it must be obvious that both questions are closely dependent. A penalty is only incurred when imputable crime has been committed. While declaring canon 2209 irrelevant—because of its subject-matter, Jorio refers in support of his view to canon 985, § 4, which deals not at all with *penalties* but with irregularities—(which, incidentally, are incurred by co-operators as well as by the principal agents).

We do not forget that laws which impose penalties must be strictly interpreted,[2] and generally given a benign interpretation.[3] This does not mean, however, that we must forego the principles of interpretation, or ignore clear laws of the Code, to favour a milder pre-Code view. Nor do we forget that canon 2219, § 3, states that a penalty is not to be extended from one person to another, for the same law text reminds us that the prescription of canon 2231 must be observed.

[1] Cf. Lehmkuhl, ii, 970.
[2] Canon 19.
[3] Canon 2219, § 1.

TAKING OF INSULIN TO PRESERVE LIFE

A medical doctor recently mentioned to some clerical friends the following case which had come within his experience. It was decided to ask you if you would be so kind as to give your opinion. A woman was suffering from diabetes for which insulin was prescribed. If she were to omit taking this treatment it appears that she would go into diabetic coma and die an easy death. The unfortunate patient developed inoperable cancer, and the prognosis was that she would live for about six months in great pain. Would it be permissible for her to discontinue the use of insulin and so die ?

Luke.

Every human being is bound *sub gravi* to take the ordinary means of conserving his life for its divinely-allotted span. To fail to do this and thereby to shorten one's life is tantamount to suicide.[1] On the other hand one is not bound to take extraordinary means to prolong one's life.[1] The question submitted by our correspondent then, it seems to us, comes to this : Is the taking of insulin in the circumstances an ordinary or extraordinary means of prolonging life ? If it is to be regarded as an ordinary means, then it would not be permissible for the woman to discontinue taking it and thus to shorten her life—even though prolongation of life means prolongation of intense pain. But if the taking of insulin is, in the circumstances, an extraordinary means, then the patient may lawfully discontinue its use even though her life will thereby be shortened. It must be noted, however, that, even if the latter hypothesis be the true one, the patient may not intend the shortening of her life as the immediate object of her act ;[3] and that there is no doubt that to continue to take the insulin, patiently enduring to the end, is the more perfect line of action.

When are means of conserving life to be regarded as ordinary and when as extraordinary ? These terms are familiar, and, like many familiar terms, are difficult to define succinctly and

[1] Cf. Génicot, *Th. Mor.,* i, n. 364 ; Davis, *Moral and Pastoral Theology,* ii, pp. 142 et seq.

[2] The following remarks written from the standpoint of a doctor's duty towards the dying are *apropos :* ' Il y a des prolongations d'agonie qui sont une cruauté . . . Tout est relatif : car il est de cas par contre, où il n'est pas indifférent de gagner, sur la mort, un délai de quelques heures . . . Bref, sauf raison grave, le practicien n'est pas obligé de mettre en oeuvre, pour retarder l'issue fatale, tous les moyens, fussent-ils extraordinaires.'—Payen, *Déontologie Médicale,* n. 204.

[3] Cf. Davis, loc. cit. ; Jorio, *Theologia Moralis,* i, η. 194, 2°.

accurately. The theological textbooks[1] generally, in this context, describe extraordinary means as those which are unusual, or difficult, or dangerous, very painful or very costly. If means do not come under any one of these heads, they are ordinary. It will be obvious that means, which some years ago would rightly have been regarded as extraordinary, may to-day, with the advance of medical and surgical science, be classed as ordinary. This is particularly true of some surgical operations.' How is the taking of insulin by one suffering from diabetes to be regarded? It involves the discomfort and pain of frequent subcutaneous injections. But, the discomfort and pain are short-lived and not very serious for the average diabetic. We understand that great numbers of diabetics give themselves, or have administered to them, a daily injection of insulin for the greater part of their lives. The injection does not seem to interfere with the normal activity of the patient. In brief, for one who can afford it, the taking of insulin may, we think, be placed in the category of ordinary means of conserving life in the uncomplicated case of diabetes. Thus, in our view of the case submitted, the patient was bound to take insulin before the cancer developed and was diagnosed. Apparently she had been taking it for some time.[3]

Does the fact that the woman has developed a fatal, inoperable and painful cancer alter this situation? The taking of insulin now, *of itself* seems, on the evidence, to be no more unusual, no more painful, no more costly and, therefore, no more extraordinary than before. But indirectly it will involve, inasmuch as it will prolong life, a period of grievous suffering on the part of the unfortunate patient. In the concrete circumstances, then, it would seem that the taking of insulin is inevitably associated with the prolongation of intense pain. And it may well be asked whether this association makes the taking of insulin an extraordinary means of conserving life? We think it does not. The pain which the patient will suffer as a result of the prolongation of life is something accidental and extrinsic to the

[1] Merkelbach writes: 'Graviter peccant qui media ordinaria recusant sumere ad sanitatem recuperandam vel vitam incolumem conservandam; non autem qui media extraordinaria, exquisita, inusitata, pretiosiora, valde difficilia adhibere nolunt uti patriam relinquere et regionem salubriorem quaerere, operationem valde laboriosam aut periculosam subire, vel notabilem amputationem.'—*Th. Mor.*, ii, n. 353, c. And Jorio, loc. cit., says: 'Non datur obligatio servandae vitae nisi mediis ordinariis, quae nempe nec magna inducunt incommoda, nec sumptus pro varia cuiuscumque conditione ingentes exposcunt, neque dolores admodum acerbos causant.*

* Cf. Merkelbach, loc. cit.

» This fact is, to some extent, an indication that it is for her an ordinary means.

taking of the insulin and cannot alter the nature of these means If they were ordinary means before, they are likewise ordinary now. If the extrinsic consideration[1] that a patient would have to endure a period of intense pain at the end of life could convert some otherwise ordinary into extraordinary means which the patient would not be bound to take, then it should logically be conceded that a patient would not be bound to take any ordinary means to conserve a life of severe suffering ; would not be bound therefore, to take food or drink—since the taking of them, too, would, in a somewhat similar manner, indirectly cause the prolongation of intense pain. It may be objected that there is no parity between the taking of food and the taking of insulin. We agree, of course, that the taking of food is a more ordinary means of conserving life than the taking of insulin[2]—there are degrees of ordinariness. But that is not to say that the taking of insulin may not be listed among the ordinary means. And if it may, and we think it may, the parity remains sufficiently, and our conclusion follows.

We have contended that, for one who can afford it, the taking of insulin is in itself an ordinary means of prolonging the life of a diabetic and is, therefore, of obligation. Anyone who accepts that contention must, we think, logically conclude that, in the case we are considering, the woman is bound to continue the use of insulin. We can well understand, though we are not prepared to accept, the plea that the taking of insulin is, in itself and, therefore, in every case, an extraordinary means of prolonging life and that, consequently, there would not be an obligation to take it in any circumstances. But once it is granted that it is an ordinary means, the conclusion that it remains ordinary in the given circumstances of the case under consideration cannot, we think, be avoided. The situation would, indeed, be different if it were proved that the taking of insulin had become *in itself* intensely painful or difficult to the patient who is suffering from a fatal cancer. That, however, is a question of fact. It may or may not be verified. There is no suggestion that it is, in the statement of the query.

[1] A consideration that is, which is extrinsic to the nature of the means and the capacity of the patient to use them.

[2] Cf. Merkelbach, loc. cit. ' Graviter peccant qui media ordinaria recusant sumere . . . a fortiori (graviter peccant) qui ab alimentis necessariis sumendis abstinent etiam ad optimum finem.'

THE GIVING OF DRUGS TO THE DYING

Would you please explain, at your convenience, how far drugs may be used, especially in the case of the dying, to render them unconscious at the end ? In this latter case it seems to me that the administration of potent drugs is really a form of euthanasia—which I understand to be absolutely unlawful. In any case, while I can express an opinion or preference in the matter, let me say that I for one do not want to be drugged out at the end. . . .

Senex.

It is true that some writers describe euthanasia as the deliberate taking away of the consciousness of a dying patient so that it will not return before death.[1] It is presupposed in this description that the drugs do not directly shorten the patient's life. Euthanasia, in the sense described, may be lawful under certain conditions. But the term is also used, and we think more commonly used nowadays, to mean the use of drugs to terminate painlessly the life of one whose continuance in life is regarded as a social menace from the eugenic standpoint, or of one who is suffering grievously from a fatal disease.

Mors alteri de eius expresso consensu per misericordiam allata. . . . Duplici autem capite ab cius assertoribus commendatur scilicet : (1) ad finem eugenicum - - - (2) ad hominem ab acerbis doloribus morbi lethalis et protracti liberandum.'[2]

Thus defined, euthanasia is simply a refined form of murder. It is the direct killing of an innocent person and is absolutely forbidden. No human authority has the right to take away, or to set the term for, innocent human life. And we need hardly add that the fact that the patient consents to, or even requests, the speedy termination of his life by artificial means does not alter the situation. Euthanasia which implies the direct shortening of life, even what is euphemistically called by some modern social reformers voluntary euthanasia, remains always absolutely forbidden. A human being's right to life is inalienable : he may neither take away nor shorten directly his own life ; nor may he give permission to others to do so.

The liceity of the use of drugs in general is determined by applying the well-known principles which govern the act which has two effects—one good, the other evil. The administration of a drug will normally give rise to two such effects—and these must be considered in their concrete circumstances. Even in the case of less potent drugs—which do not bring about complete

[1] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 195.
[2] Jorio, *Th. Mor.,* ii, n. 231. Cf. Sutherland, *Laws of Life,* pp. 260 et seq.

unconsciousness—there may be a danger that the person who takes them will become a drug addict.[1] Consequently, they may not be taken without a cause. But the danger mentioned will, as a rule, be fairly remote, unless the narcotics are taken frequently, and the necessity of relieving severe pain, or of helping one suffering from insomnia to sleep, would justify their use. When the drugs are so potent, or are taken in such doses, that they bring about complete anaesthesia, a graver cause is required to justify their use. We are all familiar with such causes. General anaesthetics are used to-day, and lawfully, in the vast majority of surgical operations.

Our correspondent asks particularly whether it is lawful to use drugs to render a patient unconscious at the end of life? If the patient is not suffering pain there is no justification for rendering him unconscious. Hence there is no justification for a general practice of drugging *all* dying persons. Let us suppose, however, that the patient is suffering grievously severe pain which will last to the end. In these circumstances the administration of the drugs will save the patient intense agony. He will die painlessly in sleep. But, on the other hand, he will be deprived of consciousness during possibly supremely important hours of his life.[2] While the moralists are not agreed on all points in this connexion, they are agreed that if the patient is unwilling or is not prepared for death, if he has not made his peace with God and arranged reasonably well his temporal affairs, then he should not be rendered unconscious. If, however, the dying patient has made, humanly speaking, all the necessary preparations and arrangements, then it is very commonly held that he may be drugged into unconsciousness. Some theologians[3] take a stricter view and hold that the procedure mentioned is lawful only in the case in which there is danger of the penitent's relapsing into sin or committing serious sins of impatience.[4] These latter emphasize, unduly, many think, the value of the last hours of human life as a time of

[1] Cf. Capellmann, *La médicine pastorale,* pp. 80 et scq.; Prümmer, *Th. Mor.,* ii, n. 672. 'Talis usus, etiam moderatus, si per longius tempus durat, sanitati corporis graviter nocet et vehementissimam morphii, etc., cupidinem provocat quae vocatur a medicis morphiomania.'

[2] Cf. Aertnys-Damen, *Th. Mor.,* i, n. 260.

[3] Cf. Surbled, *La Morale,* iii, p. 284.

[4] Cf. Payen, *Déontologie Médicale,* n. 203: 'Nous conseillons au médecin de n'en user que si le pauvre malade, à bout de patience, est en grand péril de compromettre, par de lourdes fautes, son salut étemel. Bien entendu, une raison d'une gravité tout exceptionelle autoriserait seule le médecin à donner, *dans ces circonstances,* une dose de morphine qui, sans tuer directement, ce qui est toujours défendu, aurait pour effet d'accélérer la mort.'

merit. Yet it cannot be denied that these last hours are valuable, and that there is danger of abuse if a too facile recourse to the use of potent drugs in these circumstances is allowed. In other words we must be on our guard against two extremes. In practice we recommend the following procedure. The patient should be exhorted to bear his sufferings patiently. He may be willing and anxious to be allowed to do so. Like our correspondent he may object to being drugged out at the end. And his wishes in this matter should be respected. Even if a penitent is suffering intensely and is inclined to be very impatient, it may be possible to give considerable relief without depriving him of his consciousness. If such a course is possible, it should be followed. If it is not possible, and if the patient is prepared for death, is suffering intensely and does not desire to be allowed to continue to suffer, then it would be lawful to bring about complete anaesthesia.

Une réserve encore plus grande s'impose à titre de strict devoir, envers les moribonds, qui doivent pouvoir profiter de leurs derniers instans pour régler leurs affaires temporelles ; préparer, s'il est besoin, par un sincère repentir, leur éternité ; ou, tout au moins, acquérir, par un généreux sacrifice de leur vie, d'inappréciables mérites. Le médecin est autorisé à leur accorder des calmants légers, qui modèrent l'âpreté de la douleur. Mais il ne les privera en aucun cas d' l'usage des sens et de la raison, avant qu'ils aient prie, au temporel et au spirituel, leurs dernières dispositions.[1]

THE MORALITY OF VIVISECTION

I am interested in the question of vivisection and have recently discussed it with a group of laymen. There seemed to be a certain degree of confusion as to the correct Catholic teaching on the question. It was mentioned that some well-known Catholic writers—among them Cardinal Newman—were vehemently opposed to the practice of vivisection which they regarded as unchristian and unethical. It was suggested that we should ask you if you would kindly set out exactly the Catholic teaching. We feel that the subject will be of interest to many other of your readers, as well as to us.

P. N.

Vivisection means the practice of using living animals for surgical and medical experimentation. Living animals are operated on, or are inoculated with various types of germs in order to observe symptoms and to test remedies, especially in the medical, pathological and biological spheres—remedies which will afterwards be applied for the prevention or cure of

[1] Paycn, loc. cit. Cf. Address of Pope Pius XII on the use of anaesthetics. *A.A.S.* xlix, (1957) pp. 129 et seq.

human disease. Basically, then, the practice of vivisection really implies that living animals are used for the welfare of man. And it is perfectly lawful that they should he so used. There is a hierarchy in created nature.[1] In the designs of God animals were created to serve the use and benefit of human beings. 'What is man that thou art mindful of him? . . . Thou hast set him over the works of thy hands. Thou hast subjected all things under his feet, all sheep and oxen, the beasts also of the fields, the birds of the air and the fishes of the sea.'[2] Accordingly, it can be said at once that vivisection is not, in itself, unlawful.

At the same time it must immediately be added that vivisection can be regarded as lawful only in so far as the experimentation carried out may be calculated to serve a really useful purpose.[3] In other words, Catholic doctrine does not condone useless or unnecessary experimentation on living animals. And, in the carrying out of the various experiments, all needless and excessive pain or cruelty should be avoided. Thus, in painful experimentation, if it is possible, without notably interfering with the value of the tests, to drug or anaesthetize the animals, this procedure should be followed.

It is clear, then, that Catholic teaching on vivisection holds a middle way between two extremes. We have, firstly, the excessive sentimentalism of those antivivisectionists who would ban *all* experimentation on living animals. At the other extreme we have the sadistic view of those who apparently regard living animals as the fitting object of all kinds of unnecessary and cruel experimentation and exploitation. The antivivisectionist ignores the fundamental principle, mentioned earlier, that, in God's arrangement, animals are created to serve human needs. The antivivisectionist seems to be more interested in preventing animal suffering than in alleviating and curing human pain. He is generally illogical. He will eat animal flesh—though death is rarely inflicted without pain. He may even hunt, shoot or fish—for pleasure. He sometimes speaks of the rights of animals. This is an inaccurate expression. Animals lack reason and personality, and, therefore, they cannot be the subject of strict rights.[4] But it is wrong to regard living animals as fair

[1] Cf. St. Thomas, *S.T.*, 2, 2, 64, a 1; *Summa Contra Gentiles,* 1, iii. c. cxii.

[2] Ps. viii, 5-9, cf. Gen. i, 26.

[3] Cf. Cathrein, *Moralphilosophie,* i, p. 633.

[4] Cf. Priimmer, *Th. Mor.*, ii, n. 1: 'Ex dictis sequitur, ut animalibus non competant iura quia non sunt praedita facultatibus *moralibus.* Ergo numquam aliquis committit iniustitiam proprie dictam contra animal. Quare theologi solent breviter dicere: Animalia sunt quidem obiectum, sed non subiectum iuris.' Cf. Davis, *Moral and Pastoral Theology,* ii, pp. 258, 259.

game for any and every form of human experimentation and cruelty. Animals, indeed, have no strict rights, but they have feeling and sensation and can clearly suffer grievously from punishment and pain. It is unethical, and every normal human instinct revolts from the practice, to inflict needless suffering on any of God's creatures.

Briefly then, experimentation on living animals, even though they may suffer severe pain in the process, is lawful to the extent that it is necessary for a genuinely scientific purpose which may benefit humanity. It is unlawful to inflict any unnecessary suffering on animals either in the course of vivisection experiments or otherwise. How is this sin of wanton cruelty to animals to be classified? It is not a sin of injustice. Nor is it, *per se,* a mortal sin. Some writers say that it is a violation of no particular virtue, but is opposed to the general obligation of acting in accordance with rational principles.[1] We think, however, that cruelty to animals may well be classed as a violation of the virtue of temperance[2]—or more specifically as a violation of mildness and clemency which are potential parts of the cardinal virtue of temperance. *Apropos* of this, St. Thomas[3] points out that indulgence in cruelty to animals often leads men to ill-treat their fellows, and this, he considers, is one reason why cruelty to animals is forbidden. It is a question of fact whether unnecessary suffering is sometimes inflicted in vivisection experiments.[1] There may, indeed, be such abuses. If so, they are regrettable and should be eradicated. But we cannot condemn vivisection *in toto* because of abuses accidentally associated with it; *abusus non tollit usum.*

Our correspondent refers to the vehement opposition to vivisection of some well-known Catholic writers. He does not mention the names of any of those writers other than that of Cardinal Newman. We know that Cardinal Newman's support is often invoked by the antivivisectionist. But it can fairly be established that what the Cardinal opposed was not at all the necessary experimentation of scientific vivisection but the

[1] Cf. Priimmer, op. cit., ii, 14: 'Crudeliter tractare et vexare animalia (sine sufficienti ratione) est peccaminosum, tum quia rectae rationi repugnat, tum quia homo in tali tortura saepe quaerit voluptatem plane perversam.'

[2] Cf. Noldin, *De Praeceptis,* n. 346.

[3] *Summa Contra Gent.,* loc. cit.: 'Si quae vero in sacra Scriptura inveniantur prohibentia aliquid crudelitatis in animalia bruta committi . . . hoc fit vel ad removendum hominis animum a crudelitate in homines exercenda, ne aliquis exercendo crudelia circa bruta, ex hoc procedat ad homines.'

[4] Noldin, loc. cit., writes: 'Negari nequit vivisectiones complurium medicorum honestos limites multum excedere atque in veram torturam animalium degenerasse.'

infliction of wanton and unnecessary suffering on animals. He stressed more than once in his public statements that animals were meant to serve the needs of man. In one of the sermons preached in the University Church, Dublin, we read 'You know, my brethren, we, in our turn, have no duties towards the brute creation; there is no relation of justice between them and us. Of course we are bound not to treat them ill, for cruelty is an offence against the holy Law which our Maker has written on our hearts, and is displeasing to Him. But *they* can claim nothing at our hands; into our hands they are absolutely delivered. We may use them, we may destroy them at our pleasure, not our wanton pleasure, but still for our own needs, for our own benefit or satisfaction, provided we give a rational account of what we do.' In this quotation, the correct doctrine is clearly outlined. It is very probable that other Catholic writers, who are claimed as antivivisectionists, may simply have expressed vehemently their condemnation of practices in which unnecessary suffering is inflicted on animals.

PAPAL ADDRESS AND INDIRECT KILLING

In an address on medical ethics by Pope Pius XII, I see no reference to the cases in which it might be necessary to remove a maternal organ or to administer some treatment, even though these procedures may, in the case of a pregnant mother, involve the destruction of foetal life. Admittedly, I have not seen the full text of the address. But in the reports of it which I have seen, the emphasis seems to be entirely on the duty of preserving the life of the foetus at all cost. Surely, however, it is lawful to remove a dangerously diseased organ even though such removal involves the death of the foetus! A few words of explanation will be appreciated by

Damian.

A translation of the full text of the papal address, referred to by our correspondent, appears in the December 1951 issue of the *Irish Ecclesiastical Record*.[2] Pope Pius XII, in the relevant passage, restricted his remarks to the *direct* killing of the foetus. The word 'direct' is repeated four times in the passage and is italicized on the first occasion.[3] In a subsequent address[4] the same Pope referred to this matter and

[1] *Sermons Preached on Various Occasions,* Sermon VI, 'Omnipotence in Bonds,' pp. 79-80.

[2] December, 1951, pp. 515-29.

[3] Ibid., p. 517.

[4] This address was given to an Italian National Congress of the 'Family Front.' Cf. *L'Osservatore Romano,* 29 November, 1951.

emphasized that he had, of set purpose, constantly used the expressions : ' a *direct* attack upon the life of an innocent person ' and ' *direct* killing.' In other words the Pope, in his former address, was simply applying to the case of unborn children the fundamental principle of the natural law that it is never lawful, in any circumstances whatsoever, directly to take innocent human life.

It is not so easy to define in exact and simple terms what is meant by direct killing. The Pope, in his earlier address, described a direct attack on human life as an attack which aims at the destruction of this life either as an end in itself, or as a means to some other end—even though this latter end be in itself lawful. Perhaps, then, direct killing may be defined as the performance of (or the omission of) an act, the primary and natural result of which is to bring about death. Merkelbach writes i[1]

> Occisio est actio vel omissio quae mortem causare nata est. . . . Directa est quae in sc intenditur tamquam finis aut medium, sive explicite sive implicite, ut dum actio vel omissio ad nullum alium finem immediate tendere possit.

A Dominican writer[2] has given a more specific and more philosophic definition, which may be stated thus :[3] direct killing is an act (or omission) which deprives the body of these dispositions which are necessary in order that the soul can remain in it. In direct killing, the destruction of human life, foetal or other, is the immediate and *per se* object of the lethal act or omission. By contrast, the term indirect killing is used to describe the situation in which death arises *per accidens,* by reason of the presence of factors which lie outside the immediate object of the act performed.

The plea of Pope Pius XII was for a recognition, and a practical acceptance, of the consequences of the fact that innocent human life is sacred and inviolable—a fact which is ignored so blatantly by so many, as the prevalence of embryotomy and direct abortion shows. As has been noted, it is a fundamental principle of the natural law that it is never lawful directly to take innocent human life. The child in its mother's womb, and at birth, as well as afterwards, is an innocent human being.

[1] *Summa Th. Mor.,* ii, n. 349.

[2] Father Bender, O.P., in *Angelicum,* xxviii, 1951, article : ' Occisio directa et indirecta,' pp. 224–53.

[3] Ibid., p. 231 : ' Unde definitio occisionis est : actus qui corpus privat dispositionibus necessariis ut anima in eo remanere possit vel cohibere entis viventis operationes necessarias ad conservandas dispositiones istas aut omittere istas operationes necessarias.'

Therefore directly to take its life is always and everywhere immoral; is, in fact, the heinous crime of murder. Direct abortion is the performance of an act, the primary and natural effect of which is to expel a non-viable foetus from its mother's womb. Direct abortion is direct killing, is simply murder, since, *ex hypothesis* the foetus cannot live outside the womb. Pope Pius XII did not say that the life of the child must be safeguarded *at any cost.* Nor did he say, nor did the Church ever teach, that the life of the child must be preferred to that of the mother.[1] Both mother and child have an equal and independent right to life. It can never be lawful directly to subordinate the life of one to that of the other. It would never be morally permissible, therefore, directly to kill the mother in order to save the life of the infant. An end, however good, cannot justify unlawful means. The life of the child and the life of the mother must both be safeguarded by every lawful means.

In his address to the Italian Union of Catholic Midwives, Pope Pius XII did not discuss the question of the liceity of acts from which the death of the foetus may follow as an indirect effect—an effect which is foreseen, but is neither intended nor desired, either as an end or a means. The address dealt with a number of specific points and did not at all purport to be a complete statement of medico-ethical teaching. It is hardly necessary to remark that such a complete statement would be impossible within the limits of an address at a papal audience. According to the accepted teaching, it is lawful to perform an act from which the death of the foetus follows as an indirect effect, provided there is a sufficiently serious cause for performing the act. This implies that no other procedure is reasonably available to bring about the desired result without involving the consequence of foetal death. Thus, if it is necessary to remove the mother's womb because it is so seriously diseased as to constitute a grave danger to her life (say by reason of a cancerous growth)—such removal would be lawful even though the mother is pregnant and the foetus is not as yet viable. As a result of the removal of the womb containing a non-viable foetus, the latter will die. But this death is not the direct effect of the operation. It is not the death of the foetus which serves the mother's health, but the removal of the diseased womb. In other words, the womb is excised because it is, independently

[1] This denial is explicitly made in the address to the 'Family Front' Congress.

of the pregnancy, seriously diseased—not because it contains a non-viable foetus. The death of the foetus stands outside the immediate object and purpose of the operation, of which it is only an indirect or *per accidens* effect—an effect which, though foreseen as inevitable, is neither intended nor desired. In brief, it can be said that, in this case, the diseased womb is removed, even though it contains a non-viable foetus, not because it contains this foetus.

No cause whatsoever will morally justify an action from which the death of the foetus results as a direct effect. Only a very serious cause will justify an action from which foetal death follows even indirectly—because the loss of human life is a very serious consequence. Therefore if it is possible to postpone, without undue risk, the removal of the diseased womb of a pregnant mother until such time as the foetus will be viable, this postponement is demanded by the moral law. The principles stated in regard to operations apply also to medical treatment which might indirectly cause abortion or the death of the foetus. In all these cases in which the destruction of foetal life follows indirectly it will be seen that the licit operations or treatment are necessary independently of the circumstance that the mother is pregnant, and the good effect is attained independently of the circumstance of the fatal termination of the pregnancy. And so the broad principle emerges that it will, in general, be lawful to do for a pregnant mother, by way of operation or treatment, what may lawfully be done for a non-pregnant mother in a similar state of disease. There are, however, two qualifications which should be made. As has already been noted if, in the case of a pregnant mother, the operation or treatment may, without undue risk, be postponed until the foetus is at least viable, this postponement is obligatory. In the case of the non-pregnant mother, such postponement need not be considered. Again, in the case of the pregnant mother, the possibility of other equally, or nearly equally, effective procedures which will not involve foetal death must be carefully weighed, and if such procedures are feasible they should be preferred. There is greater freedom of choice in the case of the non-pregnant mother. When the medical indications are clearly such that an operation on, or treatment of, a diseased mother are urgently necessary, the surgeon or physician need not hesitate even though the mother is pregnant and the death of the foetus will follow as an indirect effect from his intervention. In his address to the National Congress of the 'Family Front,' Pope Pius XII referred to many of the points discussed in this

reply. It may be well, by way of conclusion, to quote one highly relevant passage here. The Pope said : ' On purpose we have always used the expression " *direct* attempt on the life of an innocent person," " *direct killing*." Because if, for example, the saving of the life of the future mother, independently of her pregnant state, should urgently require a surgical act or other therapeutic treatment which would have as an accessory consequence, in no way desired or intended but inevitable, the death of the foetus, such an act could no longer be called a direct attempt on innocent life. Under these conditions the operation can be licit, like other similar medical interventions, provided always that a good of high worth, such as life, is concerned and that it is not possible to postpone the operation until after the birth of the child or to have recourse to other efficacious remedies.'

THE MORALITY OF THE USE OF THE ' TRUTH-DRUG '

A man, through no fault of his own, does not see the firing line during the war. He ceases to be interested in church-going. After the war he is found to be suffering from a very unhealthy mind in a perfectly healthy body. The unhealthiness of mind shows itself in aversion from home and home-contacts and in dangerous fits of violence. Brain specialists, after several bouts of the ' truth-drug,' diagnose that he is suffering from a sense of guilt at having been a non-combatant.

Would you kindly comment on the general morality of the use of the ' truth-drug ' ? In particular would it not, in the case of a priest, menace the sacramental seal ?

Ignoramus.

It seems that several drugs may be described as ' truth-drugs,' in the sense that under their influence the recipient is induced to reveal, either spontaneously or in answer to questioning, what is hidden in his subconscious mind. One such drug is Evipan. A more recently advertised truth-drug is known as Pentothal or Nesdonal which has properties akin to those of Amytal.[1]

[1] Cf. *Études,* October, 1948, pp. 4–21, art. ' Le Pentothal, Drogue de l'Aveu,' by Jean Rolin. We are greatly indebted to this article and we would recommend it heartily to our correspondent as an excellent discussion regarding the use of Pentothal, especially regarding the legal and medical aspects of such use. M. Rolin is fully alive to the dangerous implications, and we shall presume permission to quote later some of his trenchant criticisms Cf *Pentothal*—pamphlet issued by Abbott Laboratories, Ltd.

Pentothal is a general anaesthetic, but contains in addition certain specifically sedative elements. This drug is administered by way of intravenous injections. If given in prescribed doses and according to a definite rhythm, Pentothal gradually reduces the patient to a state of torpor or quasi-hypnosis. If the dosage is continued, or increased in quantity or rhythm, complete anaesthesia is induced. Under the influence of the drug, the patient's conscious control is destroyed, and the barriers which enclose complexes in the subconscious mind may be broken down. The patient is amenable to questioning both in the twilight stage before the onset of deep anaesthesia, and in the subsequent semi-conscious state before full reawakening. Sometimes, apparently, the patient will spontaneously reveal the contents of his sub-conscious mind. Yet, often enough, he will only speak when questioned, and may even, to some extent, resist questioning. On the whole, however, Pentothal tends to make the patient loquacious and to induce in him a state of high suggestibility.

A 'truth-drug' like Pentothal could be used for two main purposes—as an exploratory and curative agency in the field of psychiatry, and as a means of obtaining evidence from an accused in a judicial trial. Our correspondent's question has reference to, and has arisen out of, the first kind of use. It is clear that the administration of Pentothal can help the psychiatrist to explore the subconscious mind of the patient and thus may lead to the discovery of a complex, and to its subsequent unravelling. In this way, Pentothal can be both an exploratory and therapeutic factor in relation to certain neurotic and psychic disorders. It is pointed out that this narco-analysis, as it is called (that is, mental examination of the patient with the aid of drugs), combines elements of shock treatment with psycho-analytic methods. The purpose of all shock treatment, whether administered electrically or by insulin injection, etc., is to annihilate temporarily the mental functions and thus to break up and eliminate any morbid elements, so that it may be possible to build up a rebalanced mental outlook. It is argued in favour of the use of Pentothal—as against other techniques of shock treatment—that by duly controlling the dosage and the rhythm of administration, the necessary degree of torpor and suggestibility suitable for each particular case can be gradually induced. Thus the drug can be used in a wide variety of cases. As has been noted, one of the effects of Pentothal is to eliminate conscious control. It follows, then, that the patient under its influence cannot make any conscious contribution towards his

cure, as he can in the more usual psycho-analytic methods. But it is held by many that narco-analysis has the advantage that the psychiatrist can work much more quickly[1] on the drugged patient, that the content of the sub-conscious and, perhaps, the focus of the disorder can be reached almost at once. The practitioner is not dependent upon the co-operation or confidence of his patient. This independence may, however, be regarded as a doubtful advantage—as we shall note later.

The use of Pentothal by psychiatrists has given mixed results. In the main, the writers are unwilling to pass any general judgement on the success of the treatment.

Il est trop tôt sans doute pour dresser un bilan de ces recherches complexes qui comptent des succès saisissants et des échecs non moins certains.[2]

Further trial and experience may lead to a much higher percentage of success. An inevitable obstacle must be the difficulty of interpreting the data provided by the narco-analytic examination. It seems certain that, through the administration of drugs like Pentothal, the psychiatrist can indeed probe the recesses of the subconscious mind, but it is questionable if he can discover any unconscious complexes. Up to the present, simple emotional neuroses, and those due to recent shock, have responded most favourably to narco-analytic treatment.

Au point de vue thérapeutique un fait semble acquis : c'est l'heureux résultat de la narcose sur les névroses par choc émotionnel récent.'[3]

In the more complex neuroses and in psychotic disorders, the use of drugs, as a means of exploring the focus of the disease, or of curing it, has been mainly unsuccessful. A somewhat similar judgment has been passed on hypnotism as a curative agency in psychiatry. It may not be out of place to remark here, in passing, that cures of neuroses and other disorders attained by the method of ' waking suggestion ' seem to be more permanent. Perhaps it is because in ' waking suggestion ' the patient's

[1] Psycho-analysis is oftentimes a long, troublesome and weary process—cf. Ruland-Rattler, *Pastoral Medicine,* pp. 231-2.

[2] Rolin, art. cit., p. 6. Later the author quotes an eminent psychiatrist as reporting on the use of narco-analysis in the following words : 'J'ai obtenu des résultats indéniables mais chez les malades dont l'affection mentale devait, d'après le pronostic clinique, évoluer spontanément vers la guérison, en un temps plus long. J'ai observé aussi des résultats purement spectaculaires, avec levées subites de " barrages," mais suivies de rechute et parfois d'aggravation. Comme pour tous les procédés nouveaux, on assiste au début à un afflux de publications favourables, bientôt suivi de quelques publications critiques ; finalement, le nombre de celle-ci augmente et quelques cas seulement restent reconnus comme bénéficiâtes de la nouvelle méthode,' p. 8.

[3] Ibid., p. 6.

conscious will is not submerged.[1] Thus the patient can co-operate with the psychiatrist, and by this very co-operation his will-power is naturally built up and somewhat buttressed against collapse.

What is to be said of the morality of the narco-analytic method in psychiatry? It seems to us that the moral teaching laid down regarding hypnotism should be applied. There is a close analogy between the two methods of treatment. In both, the patient is reduced to a state of very great suggestibility.[2] There seems to be the same dissociation of the mind compartments. It can be said then, we think, that the administration of drugs like Pentothal, as a form of psychiatric treatment, is only lawful provided certain definite precautions are taken. In particular, it must be clear that this treatment is necessary, and that the psychiatrist who performs it is skilled, and morally above reproach. The treatment should be performed in the presence of a trustworthy witness. Normally, too, the consent of the patient should be obtained.[3] These are the conditions usually demanded in order that a patient may lawfully be hypnotized:

Statuendum est (applicationem hypnotismi) licere sub his conditionibus: 1° Ut gravis necessitas detur ad eius applicationem, sicut de chloroformationis applicatione valet. 2° Ut infirmus alio modo curari non possit vel saltem cum eadem facilitate. 3° Ut hypnotizans sit omni exceptione major in bonitate, honestate, fidelitate (verbo, ut sit vere bonus et timoratus christifidelis). 4° Ut infirmus, quidquid cum eo faciendum sit, vere sciat, scilicet se per aliquod tempus amissurum libertatem, et libere consentiat. 5° Ut adsint personae, sessionis testee fideles et infirmo accepti et confidentes, qui eorum, quae facta fuerint rationem reddere possint.[4]

The reason for these precautions, in both hypnotism and narco-analysis, are obvious when it is recalled that the patient's conscious control is temporarily lost, that he is in a highly suggestible state, and is at the mercy of the psychiatrist. An unskilled or disreputable practitioner might create new complexes by imprudent questioning, or might even make immoral suggestions. Thus, there are temporal as well as spiritual dangers. It should be added that the practitioner and witnesses present are bound to observe due secrecy regarding any revelation made by the patient. Our correspondent asks in particular about the possible danger to the sacramental seal in the case of priest patients. There might, indeed, easily be some danger of a

[1] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 19.
[2] Cf. Ruland-Rattler, op. cit., pp. 225-30; Davis, op. cit., pp. 17-19.
[3] In extreme cases it would be lawful to presume the consent of the patient. If the patient is incapable of giving consent, then the permission of the parents or guardians must be obtained.
[4] Pujiula, *De Medicina Pastorali,* n. 255. Cf. Noldin, *De Praeceptis,* n. 749.

material violation—especially if the psychiatrist is not completely trustworthy. In other forms of psychiatric treatment of priests, and even in the acceptance by them of a general anaesthetic, there may be somewhat similar danger to the professional seal. Needless to say, the psychiatrist should never ask any questions which have reference to sacramental knowledge even if, perchance, as a consequence he must fail to discover the cause of the mental disorder.

We may also consider briefly the topical question regarding the use of 'truth-drugs' as a means of obtaining evidence from the accused in a judicial trial. This is the question which is primarily considered in the article in *Études* as is clear from the title 'Le Pentothal, Drogue de l'Aveu.' No moralist, we think, would for one moment hesitate to declare vehemently the unlawfulness of such a method of obtaining evidence, for his conviction, from one accused of crime.[1] This procedure would involve the denial to the accused of a fundamental right—the right to retain his freedom of will, the right, within limits, to preserve his secrets, the right to plead 'not guilty.' It is a well-recognized principle that one accused and guilty of a crime is neither morally nor legally bound to confess his guilt.[2] A plea of 'not guilty' is accepted by moralists as a legitimate mental restriction. To extort a confession of guilt by means of drugs is to run counter to these accepted principles—even when the accused is guilty. A confession that is forced in that way is not a confession at all.[3] To drug an innocent man so that he may, while under the influence of the drugs, be induced to 'confess' crimes, as suggested to him, is a heinous crime and a complete travesty of justice. The invasion of a man's temporal rights and corporal integrity is indeed a very serious wrong, but the invasion of spiritual rights and of mental integrity is the grossest form of injustice. It is a short step to the permanent mutilation of a man's mental powers and personality—a crime which surely cries aloud to heaven for vengeance. M. Rolin had an almost prophetic insight of events in Hungary when he wrote:

[1] Some suggest that while narco-analysis may not be used to extort an admission of guilt, it could be used, with the consent of the accused, for the purpose of establishing innocence. But such a procedure would be open to abuse and fraught with so many dangers that we could not easily regard it as morally justifiable.

[2] Cf. Canon 1743, §1. 'Iudici legitime interroganti partes respondere tenentur et fateri veritatem nisi agatur de delicto ab ipsis commisso.' Cf. Noldin, op. cit., n. 732.

[3] 'Sans liberté un aveu n'est donc plus rien que l'avilissement d'un homme.' Rolin, art. cit., p. 19. Cf. Canon 1752.

On imagine quelque Néron des temps à venir, persécuteur de chrétien», ce ne seront plus lrs fers ou les fauves ; on fera ' passer sous la drogue ' ; on aura des reniements savamment obtenus et soigneusement enregistrés. Heures des puissances ténébreuses ou l'Eglise n'aurait plus de martyrs. . . . Les premiers pas sont déjà faits vers cet état où chaque conscience dépouillée de son secret dans une humanité sans mystère et un monde sans refuge, ne sera plus qu'une espèce de fantôme transparent livré a tous les regards, sous cette clarté glacée qui doit être la lumière même de l'enfer.

In a public address of 20th February, 1949, Pope Pius XII said of the modern persecutors of the Church :[1] 'They are not satisfied with shattering their victims physically. They also want to render them despicable and hateful to their fatherland and society.'

THE CATHOLIC TEACHING ON NARCOANALYSIS—DISCUSSION AT MEDICAL CONGRESS

I have seen it reported that at a Catholic Medical Congress in Rome some years ago the use of drugs in the treatment of mental disorder was condemned. Could you say if this is correct and whether such a condemnation would be subscribed to by Catholic moralists ? The matter is of great interest and importance, as drugs are considerably employed nowadays as a method of treatment of some types of mental patients.

Medicus.

Our correspondent's first question is one of historical fact. Was narcotherapy condemned at the Catholic Medical Congress held at Rome in 1949 ? From the reports which we have seen[2] we feel that we can say, with absolute confidence, that there was no question at the Congress of any condemnation of the use of drugs in the diagnosis and treatment of mental disorders. A discussion on narcoanalysis was initiated by Dr. Palmieri, Professor of Legal Medicine at the University of Naples. The professor immediately made a distinction between the use of drugs to probe the focus of mental disorder and their use to extract confessions of guilt from defendants in criminal cases. He maintained that the former use is lawful and that narco-analysis can be very helpful in discovering the source of some forms of mental and nervous trouble.[3] He rejected entirely, as

[1] Cf. *LOsservatore Romano,* 21-2 February, 1949.

[2] In particular, the reports published in *L'Osservatore Romano,* 29 September 1949.

[3] 'É tecnicamente utile nolle perizie psichiatriche—sopratutto per identificare una simulazione, una dissimulazione, la natura organica o funzionale d'una sindrome neurologica.' Ibid.

a gross invasion of the individual's rights, the use of drugs as a means of forcing suspected criminals to confess their guilt. The subsequent speakers took the same line. Some of them, indeed emphasized the necessity of great reserve in the use of narcoanalysis as a method of psychotherapy, and they stressed the particular obligation of strict observance of professional secrecy regarding any revelations made by the patient while under the influence of the drugs. One speaker, Professor Lisi, maintained that the value of narcoanalysis, as a diagnostic and therapeutic agency in the field of psychiatry, was exaggerated; that available statistics of cases treated by this method showed only a twelve per cent success. But nowhere is there any suggestion in the discussions that narcotherapy is, in itself, unlawful. There was, of course, unanimous condemnation of narcoanalysis as a means of extorting confessions of guilt from criminals.

In view of what we have written above, our correspondent's second question regarding the teaching of Catholic moralists on narcotherapy hardly arises. In any case we have answered this question at some length in a previous reply. And 'Medicus' will forgive us if we do not go over all the ground again. It will suffice here to sum up the teaching. Catholic moralists hold that the use of narcoanalysis as a method of psychoanalysis and psychotherapy is lawful, provided certain definite precautions are taken. These precautions correspond to those required for the lawful resort to hypnotism.[1] It must be clear that the treatment is necessary, and that the practitioner who uses it is skilled, and morally above reproach. Ordinarily the consent of the patient, or, if the patient is *non compos,* the consent of parents or guardians should be obtained beforehand. In exceptional cases it would be lawful to presume this consent. If possible, the treatment should be performed in the presence of a trustworthy witness. And any such witnesses, together with the practitioner, are bound to observe due secrecy in regard to revelations made by the patient. Catholic moralists are unanimous in their condemnation of the use of drugs to extort confessions of guilt from those accused of crime. Thus the views on narcoanalysis expressed at the recent Catholic Medical Congress are, as might be expected, in the closest harmony with the teaching of the moralists.

[1] Cf F. Connell, C.SS.R., *American Ecclesiastical Review,* cxiii (1945), pp. 448-9. G. Kelly, S.J., *Medico-Moral Problems,* pp. 44-7.

THE MORALITY OF PREFRONTAL LEUCOTOMY

N. is a perpetually violent lunatic who would have killed himself if permitted to do so. Is it lawful to perform on him the operation known as leucotomy in order to render him less dangerous to himself and to others ? This operation seems to take away all will power and it has been suggested that it was performed, to extract confessions, on some of the victims of the communistic trials on the Continent.

Rusticus.

The operation known as prefrontal leucotomy was first performed on human beings in 1935 by Dr. Moniz, a Portuguese surgeon, who, in the following year, published his findings. In the interval since then, prefrontal leucotomy has been widely used in the treatment of certain types of mental disorder—or, more precisely, in an attempt to eliminate some of the morbid symptoms characteristic of these diseases. The operation has been the subject of much discussion and a considerable literature[1] has been published, mainly in journals of psychiatry and neurology. As might be expected, then, the discussions are almost exclusively concerned with the medical aspects of the operation : indications, contra-indications, surgical technique, mental and physical results. There is only rare reference to the ethical aspects of the procedure and its consequences.[2] Our correspondent raises the moral question regarding the lawfulness of the operation in a particular

[1] Cf. Drs. Freeman and Watts, ' The Frontal Lobes and Consciousness of the Self,' *Psychosomatic Medicine,* April, 1941. Prefrontal Lobotomy—'The Problem of Schizophrenia,' *American Journal of Psychiatry,* May, 1945. Prefrontal Lobotomy—' Factors Influencing Prognosis.' *Southern Medicine and Surgery,* August, 1946. Psychosurgery—Reprinted from *Neurology and Psychiatry,* New York, 1947. Father H. O'Neill, S.J., ' Prefrontal Lobotomy in the Treatment of Psychosis,' *Jesuit Science Bulletin,* December, 1944. Report of Board of Control, ' Prefrontal Leucotomy in a Thousand Cases,' London, 1947. Father H. Bihler, S.J., ' Lobotomy,' *Conference Bulletin of Archdiocese of New York,* September, 1947. Dr. Malone, ' Problems arising from Prefrontal Leucotomy,' *Irish Journal of Medical Science,* September, 1947. Dr. O'Rahilly, ' Prefrontal Leucotomy,' *The Catholic Medical Quarterly,* April, 1948.

[2] Drs. Malone and O'Rahilly, art. cit., do refer, with great understanding, to the moral problems. We found their articles and references particularly useful. Father Bihler, art. cit., gives a brief discussion of the moral issues. We have a fuller statement from Father O'Brien, C.M., in the *American Ecclesiastical Review,* September, 1948, under the title ' Prefrontal Lobotomy—Its Present Moral Aspect.'

We have had very helpful correspondence on this question with Father Ford, S.J., Weston College ; Fr. Connell, C.SS.R., of the Catholic University (both of whom kindly sent us some of the articles quoted earlier) ; Father Davis, S.J., Heythrop College ; and Fr. Bonnar, O.F.M., Cambridge. The correspondence revealed a general agreement of view on the morality of prefrontal leucotomy.

case. Much more medical data on the case would be necessary before a specific answer could be given to his question. But it may be helpful to indicate the general lines along which the solution to the moral problem must lie. And before attempting to do this, it is necessary to describe briefly the nature and the effects of the operation, as they are presented in the more technical studies on the subject. The nature and effects of the operation are, of course, relevant factors for a decision on the moral issues.

Leucotomy means the cutting of the white matter, the white conducting fibres, of the brain. In the prefrontal leucotomy operation, the particular brain fibres severed are those which connect the prefrontal or forward part of the frontal lobe with the thalamus.[1] Though the precise nature of the functions of this area of the frontal lobe and its connections with the thalamus are obscure,[2] the area is generally concerned with thought. The thalamus is the seat of emotions and feelings. Thus an effect of prefrontal leucotomy is held to be the breaking, to some extent at least,[3] of the link between the patient's thoughts and emotions. As a result of this break, the emotional powers are reduced and, in this way, the morbid tensions which are characteristic of many types of mental disorder are relieved. In turn, the relief of the emotional tension may lead gradually to a general mental rehabilitation and recovery. ' It would seem that lobotomy achieves the divorce of the affective elements, anxieties, from their cognitive fundaments. The anxiety may be of the general all-pervasive kind or of the specific variety found in various phobias. For the most part there is an association between feelings and cognitions in our lives. In all anxiety states, the affective side dominates. But lobotomy breaks the connection between the two and thus restores the individual's experience to a more normal phase.'[4][5]

There is no uniform technique or apparatus used in this operation by the neurosurgeons.[6] Increasing operational experience is naturally leading to great technical developments.

[1] In America, the operation is called prefrontal lobotomy. It differs from another brain operation termed lobectomy which involves the amputation or removal of the frontal lobes.

[2] In the Report of the Board of Control it is stated that ' as yet the operation rests on an empirical, rather than on a strictly anatomical basis,' p. 7.

[3] ' Nothing so devastating occurs as an absolute severance of thought from emotion.' Ibid., p. 5.

[4] Bihler, art. cit.

[5] Malone, art. cit.

But, as yet, in the more common leucotomy procedures the actual cutting of the fibres is to a large extent a blind operation. Trephine openings are made in the skull, often bilaterally, under local anaesthesia if the patient is co-operative. Through the opening the cutting instrument[1] is introduced and moved or rotated so as to sever the white matter of the frontal lobe. It is hardly necessary to remark that a very high degree of surgical skill is necessary in this technique in order to control the extent and localization of the cut. Sometimes the brain is opened and the white matter is severed under direct vision.[2] The risks to life involved in the operation are not high. The mortality rate is now only about two per cent., and it is hoped, with increased experience and improvement of technique, that this low rate can be further reduced and, perhaps, can be almost completely eliminated.

Yet no one can deny that prefrontal leucotomy involves a serious interference with the integrity of the human organism —and that at the highest level, which impinges upon the moral sphere. It must be recalled, too, that there is a finality about the operation—for if damage is done, the damage is irreparable. At the same time, it is a well-known and accepted principle of moral theology that a man may undergo serious organic mutilation, if this is a necessary means of saving his life or of restoring his health. It must, of course, be clear that the mutilation has some good chance of achieving these results. Otherwise, the operation would simply be a useless sacrifice. Can we apply this general moral principle to the mutilation involved in leucotomy? Or are the effects of the operation so serious, and so to be avoided, that it can never be regarded as lawful? To answer these questions, it is necessary to consider more precisely the effects of the operation. In recent years thousands of prefrontal leucotomies have been performed and we have seen some statistical analyses of the results from England and America. The Board of Control (England and Wales) published, in 1947, a report on 'Prefrontal Leucotomy in a Thousand Cases.'[3] Of these, thirty-five per cent were discharged as recovered or greatly improved; thirty-two

[1] The instrument mostly used is a leucotome—hence the name leucotomy.

[2] A surgical procedure, known as thalamotomy, has been developed in Philadelphia. In thalamotomy, a needle is lowered through the skull to the thalamus. An electric current passed through the needle scars the thalamus tissue and blocks the nerve pathways between it and the frontal lobe. Cf. 'A note on Prefrontal Leucotomy,' by Father Keenan, O.F.M., *Catholic Medical Quarterly*, July, 1948.

[3] London: His Majesty's Stationery Office, 1947.

per cent showed improvement, but were detained in the mental hospitals; twenty-five per cent were reported as unchanged, there was deterioration in the condition of one per cent and six per cent died.[1] According to Freeman and Watts, speaking for America, 'in round figures, one-third recover, one-third improve and one-third fail to improve.'[2] Thus, the overall picture presented seems satisfactory. The operation has had considerable success in the relief of mental disorder. The prognosis is particularly good in the cases of patients suffering from schizophrenia,[3] depressive psychoses and obsessional neuroses.[4]* Unfortunately, the statisticians concentrate on what have been called quantitative or bchaviouristic results, and we have little enough indication as to the effects of the operation on the moral and religious outlook of the patient.[®] It seems fairly clear that the emotional powers of the patient are reduced. It is held, however, that there is no *per se* diminution of the ordinary intellectual powers—as measured by intelligence tests, though the highest powers of intellect may be affected detrimentally. In some cases personality changes have been reported and a loss of a sense of moral values. But these latter effects seem to be infrequent, accidental and, in no sense, an inevitable consequence of the operation. They may find their explanation in the earlier history of the patient and in a lack of emotional interest.[6]

The primary effect of the operation, the effect aimed at, and generally, though not always, attained, is the lessening of emotional tension by reducing the emotional powers of the patient. In scholastic terms it can be said that 'prefrontal leucotomy diminishes the effect of the sensitive appetite.'[7] This deliberate diminution of the powers of the sensitive appetite is a serious matter, but not so serious, we think, that the operation must be branded as intrinsically unlawful. While the emotions, by providing certain sanctions as it were, are a great help towards living a moral life, it cannot be said that an emotional clement is absolutely essential for a human act.[8]

1 The Report covers cases done in England up to the end of 1944. The mortality rate has been reduced since then.

2 O'Rahilly, art. cit.

3 Cf. Freeman and Watts, art. cit., *The American Journal of Psychiatry,* May 1945, pp. 739-48.

* Cf. Report of Board of Control, p. 9.

6 Cf. O'Rahilly, art. cit., pp. 72-8.

« Bihler, art. cit., *passim.*

7 O'Brien, art. cit., p. 198.

8 Bihler, art. cit. : 'Admission of the importance (of feelings and emotions) is far from tantamount to the assertion they are a necessary constituent of the moral act.'

This act is essentially a product of intellect and will, which faculties remain substantially unaltered by the operation.' The curtailment of the emotional powers of the patient does not, then, render the patient incapable of a human act or of recognizing moral responsibility. After the operation, by reason of the induced dissociation of the emotional from the cognitive functions, there will be, the experts tell us, a period of difficulty for the patient. But post-operative psychotherapy can re-educate and reintegrate his personality, and a measure of emotional response can be recovered. Writers speak of intellectual or emotional rechannelling. Hence emphasis is rightly laid upon the vital necessity of a period, sometimes a long period, of post-operative care, if the operation is to be a success.[2]

Perhaps enough has been said to give a background for a solution to the general moral problem suggested by our correspondent's query. It seems to us that the operation of prefrontal leucotomy is lawful, provided it be performed, with due permission, by an expert brain surgeon, as a last resort, for the relief of serious mental disorders of a type which seems likely to benefit therefrom, and provided post-operative guidance and treatment are available. It will be well to elaborate these conditions. Due permission is necessary. That is to say, the patient must consent to the operation, if he is capable of doing so. If he is not, the consent of his parents, or of those immediately responsible, must be obtained. All moralists and, indeed, every thinking person, would condemn the unwarranted invasion of human rights involved in compulsory operations and experimentation on the mentally diseased. For social and economic reasons the State might be tempted to impose leucotomy on intractable patients to render them more manageable.[3] This is a point to be watched and guarded against. An expert surgeon is required by reason of the extreme delicacy of the operation and the danger of excessive damage to the brain matter. We think that, in view of the actual and possible consequences, the operation is justifiable only for the relief of serious mental disorder and not for the treatment of pain in non-psychotic patients.[4] And we would

[1] It is not true to say, as our correspondent says, that the operation takes away all will-power. If it did, there could, of course, be no question of its liccity.

[2] Cf. O'Rahilly, op. cit., p. 66, who quotes authorities for the view that leucotomy is ' only a step in the reintegration of personality.'

[3] Cf. O'Rahilly, art. cit., p. 75 ; Malone, art. cit., p. 579.

[4] Freeman and Watts, art. ' Psychosurgery,' p. 463, advocate lobotomy for the relief of unbearable pain.

only allow prefrontal leucotomy as a last resort—that is to say, when all other less radical forms of therapy, which are available, have been tried in vain. Easily enough there might grow up a tendency to by-pass these less radical treatments, like psychotherapy, shock, and insulin treatment etc.[1] It is only in cases which are considered likely to benefit therefrom that leucotomy is justifiable. There must, therefore, be great care and judgment in the selection of cases. Indications and contra-indications have to be carefully weighed. A good deal of spade work has already been done along these lines. Each individual case has to be considered in the light of these findings. It may be said, of course, that certain types of patients, for instance hopeless psychotics, since they start with such a handicap, can stand only to gain.[2] But there will be many difficult borderline cases,[3][4] and a personal estimate must be made in regard to each and every patient. Many factors have to be taken into account: age, sex, background, duration of the disease and especially what is known as emotional response. We have emphasised earlier the paramount necessity and importance of post-operative treatment and re-education.

From all this it must be very evident that we would predicate liceity of prefrontal leucotomy only in very restricted circumstances. We regard as absolutely essential the conditions with which we have hedged round our conclusion on the lawfulness of the operation. This point is strikingly brought out by the terms in which Father O'Brien states his conclusion. He writes:[5] 'The surgical technique known as prefrontal lobotomy is *per se* illicit, but licit *per accidens.* We hold it illicit *per se* because the technique is a grave mutilation, irreparable and uncertain of success, resulting in direct impairment of the sensitive appetite and perhaps indirect repercussions on

[1] Some psychiatrists have vehemently attacked all forms of physical therapy and particularly operations like leucotomy. They have used epithets like 'Jack the Brain Slasher.' One writer says: 'The new physical therapy of mental disorders is sociologically dangerous and surgical interference with the brain in mental disorders is simply never lawful.' Another says: 'One wonders whether society is going to be any better for having more or less decerebrated robots let loose on it simply because they have been so mutilated as to be incapable of behaving badly.' Cf. *British Medical Journal,* December, 1945. Malone regards these criticisms as strongly biased.

[2] Cf. Bihler, art. cit., 'In the case of hopeless psychotics, even when and if the operation results in some intellectual impairment, there seems to be no moral objection to the operation. By supposition the operation can and does result in some general improvement.

[3] O'Rahilly, art. cit., p. 75.

[4] Cf. Freeman and Watts, art. 'Prefrontal Lobotomy,' pp. 739-40.

[4] Art. cit., pp. 198-9.

the properly human powers. . . We hold that the technique may be licit *per accidens* in certain cases where due conditions are fulfilled.' The author then enumerates conditions somewhat similar to those given above.

In regard to the particular case submitted by 'Rusticus' we can, obviously, give only a hypothetical solution. If *N's* condition has not responded to any applicable less-radical treatment but may benefit from the prefrontal leucotomy, if due permission is obtained and the services of a skilled surgeon, together with post-operative treatment, are available—then the operation may be performed.[1]

CAHIERS LAEjNNEC—\WV\CLES ON PSYCHO-SURGERY

We should like to direct the attention of our readers to the March 1951 issue of *Cahiers Laennec.* The different numbers of this quarterly publication are devoted to a discussion of the various aspects of one particular medico-moral problem. In the number to which we refer—incidentally a double number—the important and highly topical problem of psycho-surgery is discussed. Medical and surgical experts deal with the question from their own particular standpoint and competence, and their articles provide a very valuable background for a moral judgment.

In the opening article, Dr. Houdart outlines the fundamental anatomic and physiological data and principles on which psycho-surgery rests. The different types of operation are indicated and briefly described: lobotomy or leucotomy—which is sometimes performed under direct vision, topectomy and thalamotomy. In all these operations the object is to sever, at least in some degree, the connection between the thalamus and the frontal lobe and thus to ease emotional tension. The difference between the various operations seems to depend upon the particular point at which the section or severance is made. In thalamotomy the dorso-median core of

[1] O'Brien writes of the application of prefrontal lobotomy to the hopelessly insane who have to be kept under restraint in strong rooms and who as a result of the operation may become more tractable and less dangerous without losing their psychosis. He says, art. cit., p. 200: 'We believe that if competent medical authority diagnoses an emotional abnormality as the direct cause of such frenzies, the application of prefrontal lobotomy is lawful, even though only material benefits accrue to the patient and he remains hopelessly insane.' The author realizes the tremendous burden which this opinion lays on medical men to prevent abuses.

the thalamus is eliminated. Dr. Houdart reminds us that these operations are essentially directed to the relief of mental disorder. In regard to the relief of intractable pain he remarks:

> Dans le traitement de la douleur, il est au niveau du Thalamus un autre type d'intervention totalement différent par son mécanisme : la destruction du noyau postéro-externe du Thalamus, c'est-à-dire du noyau ventral postéro-latéral qui est, nous l'avons vu, le relais des voies sensitives : cette destruction peut supprimer la douleur d'une manière directe, c'est-à-dire par un mécanisme purement sensitif.

In a final sentence he states his personal view on the use of psycho-surgery :

> Pour notre part nous pensons qu'au stade actuel, ces interventions de psycho-chirurgie ne peuvent être amenées en discussion qu'en dernière analyse et après les échecs de tous les autres thérapeutiques.

The second article, by Professor Prick, gives a very interesting account of the results of leucotomy, which is the classic pyscho-surgical technique. In the light of the experience gained over a number of cases the author concludes :

> C'est en fonction de ces considérations que nous sommes d'avis que la leucotomie est moralement permise en cas de psychasthénies graves, de schizophrénies, d'accès morbides dépressifs et à forme angoissée, à condition que ces maladies ne soient pas curables d'une autre manière.

In the third article, Dr. Bertagna analyses the findings on the psychological modifications which result from psycho-surgical operations—in particular from leucotomy. He also discusses the therapeutic indications, in the different types of mental disease, for this surgical intervention. Father Tesson, S.J., a professor in the Faculty of Theology of Paris, has a short article entitled ' Leucotomie et Morale.' He sums up the findings of the other contributors and relates them to the moral problems. He points out that, while it is the body which is touched, resected, lobotomized in a surgical operation,

> Dans la leucotomie cependant, il y a quelque chose de plus, on touche pour ainsi dire à la jointure meme du corps et de l'esprit ; on atteint les facultés de l'âme, ou mieux, ce qui lui sert de premier instrument pour s'exprimer et agir, la personnalité psychique.

He analyses the principal effect of the operation as a diminution of the power of attention. In forming a judgment on leucotomy, account must be taken of the state of the patient before the operation. If the gains be balanced against the losses, Father Tesson thinks that the operation is morally justifiable. But he insists that, wherever possible, the patient's consent is absolutely necessary. If the patient is not capable of giving consent, then it is for the family and the doctor to decide. Father Tesson raises the interesting question as to

whether leucotomized patients should be allowed to enter religion, the priesthood or the married state. In regard to the first two states, Father Tesson says that the answer should be ' pour l'ensemble des cas, nettement négative.' In certain exceptional cases, entry to religion might be allowed. But it is a risky procedure and the views of specialists should be obtained in every case. The question of the marriage of leucotomized patients poses a complex problem. Father Tesson holds that they are, in the main, canonically capable of giving valid marriage consent. But he wonders if they are capable of realizing and observing the obligations of marriage—the maintenance and education of a family. He suggests that, in general, leucotomized patients should be dissuaded from contracting marriage, and that in every case the prospective partner should be told of the situation.

On ne peut laisser un homme ou une femme s'engager pour la vie avec un être aussi diminué, sans lui avoir permis.

The author ends his discussion with this remark :

On conclura que si bienfaisante à tout prendre qu'elle apparaisse pour certains sujets, la leucotomie provoque trop de détériorations psychiques pour qu'elle soit utilisée sans reflexion et comme une opération benigne.

THE MORALITY OF REPRISALS.

I shall be looking forward to a discussion of the following questions :

1. 'An unquam liceat ad talionem seu ultionem in bello recurrere ' ?
2. * Quousque limitetur actio Gubernii quoad usum talionis ' ?

Rivals.

1. We presume that the question our correspondent has in mind is that commonly described as the morality of military reprisals.[1]

By military reprisals are popularly understood acts of retaliation in kind for damage done by the enemy—and done in violation of either natural law or international convention.[2] The natural law forbids certain methods of attack—even in warfare. Everything is not fair in war. As one of the articles of the Hague Conference *of* 1907 has it, echoing Vittoria, ' the rights of belligerents to adopt means of injuring the enemy are not unlimited.'[3] The natural law forbids, for instance, the direct killing of non-combatants. All such killing, like acts of treason or violation of solemn oaths, is intrinsically unlawful. Over and above the prohibitions of natural law, certain rules of

*The Latin textbooks use the term *repressalia* to translate 'reprisals ' Cf. Merkelbach, *Th. Mor.,* ii, n. 274, a.5. ; Priimmer, ii, n. 130.

2 Cf. Cronin, *The Science of Ethics,* ii, pp. 673-4.

•Art. 22.

war have been drawn up in the present century by international conferences.[1] These rules have been subscribed to by many nations and, needless to say, bind the signatories.[2] But while they are in accordance with the natural law, they are not, in the main, part of that law. The use of poison gases and bacteriological methods of warfare are forbidden by the rules of war.

The problem of the morality of military reprisals as defined might then be stated thus : Does the fact that one of the belligerents wantonly violates, in the conduct of the war, either the natural law or the international rules of warfare, justify the other belligerent in retaliating by similar violation ? To take an example, would a direct air attack by one belligerent on an isolated non-military objective justify the enemy in making a direct attack on a similar objective ?

The theological principles are clear. No cause, no military advantage, no form of military attack by one of the belligerent Powers justifies the opposing Power in doing what is forbidden by the natural law. Thus, the direct attack of non-combatants in retaliation for similar enemy attack is intrinsically immoral and can never be justified.[3] The end cannot justify the means which are intrinsically evil. The situation is different, however, when the acts of reprisal are carried out in reply to attacks made by the enemy in violation of those rules of war which are not part of the natural law. If one of the warring nations violates such rules, the opposing nation may lawfully retaliate in kind. The reason is that these rules of war are in fact, at least for the most part, merely a bilateral agreement. And the violation of such an agreement by one of the parties thereto implicitly releases the other party from obligations thereunder—but in so far, we repeat, and only in so far, as these obligations are not part of the natural law. So, to revert to an example given earlier, the use of poison gas by one of the belligerents would release the enemy from its obligation not to use it in retaliation.[4] In brief, then, reprisals for military action which is itself forbidden by the natural law cannot ever be justified. Reprisals for violations of what is merely international convention may be justified. To say that reprisals may be justified, is not to say that

[1] Hague Conferences, 1899 and 1907 ; Five Power Washington Conference, 1921-2 ; 1925 Protocol.

[2] Pope Pius XII pointed out that the basic principles of international law enjoin that any pact which has been ratified in accordance with the rights of nations 'shall persist unimpaired and inviolable.'—*Summi Pontificatus,* Eng. trans., p. 30.

[3] Cf. Davis, *Moral and Pastoral Theology,* II, p. 150.

[4] Cf. Cronin, loc. cit.

any spirit of hatred or revenge which may accompany them is justified. We have written of the objective and general question. It must be remembered that in order that particular acts of reprisal be justified, the conditions required for lawful acts of war[1] must be verified.

Merkelbach sums up thus :[2]

Repressalia sunt periculosa et facile praebent occasionem maioribus malis ; licita tamen esse possunt, sed exclusive de praecepto principis, ubi de illata iniustitia constet, satisfactio aliter haberi non possit, et exerceantur in personas reas vel in bona nec excedatur iusta compensatio.

We have said that the principles are clear. But it must be noted, in passing, that their application to modern conditions of warfare is oftentimes very difficult. There is no doubt, for instance, that a direct attack on non-combatants is against the natural law[3], and therefore cannot be justified even as a reprisal—that is after a similar attack has been perpetrated by the enemy. In times past, the moralists had little difficulty in making a clear distinction between combatants and non-combatants.[4] Wars were fought on the battle-front between armies. The combatants, principally mercenaries, were a class apart. Conditions, we need hardly say, are very different to-day. War has become a national affair. The entire available population, male and female, is regimented and directed in various ways to establish and increase power of military resistance. Statesmen make no secret of it. Wars are no longer fought merely on a battle front. The tenor and economy of civilian life are orientated towards the effort and the goal of victory. It is not easy to decide in this total mobilization of forces, human and material, what section of the population, other than those incapable of any war effort, may be classed as non-combatants.[5]

2. The reply to this supplementary query is contained in what we have written. Nations and governments, no less than individuals, are bound by the moral law. One of the most pernicious errors of modern times—an error referred to and vehemently deplored by Pope Pius XII in his encyclical *Summi Pontificatus*[6]—is the attempt of civil authority to arrogate to

[1] We presuppose that the war itself is just—at least subjectively. Cf. Vann, *Morality and War,* chap, iv, "The Just Waging of War."
[2] Loc. cit.
[3] Cf. Cronin, op. cit., pp. 669-71.
[4] Vann, op. cit., pp. 49-50.
[5] Our correspondent has not raised this question.
[6] English translation : *Darkness over the Earth,* C.T.S., London, p. 12, 29 et seq. and *passim.*

itself rights which belong to God alone and to proclaim itself in effect, superior to the moral law. If then, an act of reprisal has reference to an attack forbidden by the natural law, no governmental fulmination or authorization can render it lawful. Or, to state the matter positively, and answer our correspondent's query directly, the lawful action of a government in regard to reprisals is delimited by the moral law as explained. It can authorize and command, *suppositis supponendis,* what, and only what, the moral law allows.

THE MORALITY OF THE HYDROGEN BOMB AS A WAR WEAPON

In recent times there have been much talk and writing about the possession, production and use of the hydrogen bomb. The time appears surely to be opportune for a full statement and discussion by Irish theologians on the morality of the military use of this bomb. The layman is vitally concerned and would be very grateful for guidance in the event of another world conflict.

Laicus.

It seems true, indeed, that there is, in these days, a demand for a discussion of the morality of the use of the hydrogen bomb as an instrument of war. But the problem is by no means a simple one, especially in present world circumstances, in which one might so easily be tempted to indulge in, and to be swayed by, wishful thinking regarding the fate of those who seem determined that the Christian way of life shall not be allowed to endure. We must say here that we have no illusions about the practical value of a moral discussion of this problem. We are well aware that the voice of moralists may be that of those crying in the wilderness. We know how the insistent demands of so-called military necessity can still the small voice of conscience. Yet the moralists must now face the problem of the morality of the use of the hydrogen bomb. Irish moralists have no exceptional competence for a discussion of this problem. In fact, we are particularly dependent upon other countries for our information regarding the hydrogen bomb. But, perhaps, by reason of this very fact and our blessed neutrality in the last world conflict, it may be thought that we can look at the problem in a more detached and slightly more objective manner, more from the outside, so to speak, than can those whose countries were immediately embroiled. This thought, however fanciful, may be the reason why 'Laicus,' who is not Irish, appeals particularly to Irish theologians.

We cannot undertake to give, here and now, anything like a complete discussion of all the factors of the problem. But perhaps our statements and conclusions, however briefly formulated, may initiate such a discussion. This would be a welcome result. The specific problem of the morality of the use of the hydrogen bomb is obviously new.[1] To assess the morality of the use of the hydrogen bomb, the moralist must apply the old accepted principles to the new factors and circumstances. In this discussion we shall have in mind the use of the hydrogen bomb as an instrument of war in or near centres of population, where presumably it would be used. It is hardly practical to consider its use against a military objective in the heart of a vast and otherwise unpopulated desert. And we do not, of course, claim any finality for our conclusion which will, indeed, be seen to differ, at least a little, from that of some other moralists.

Our conclusion is that the hydrogen bomb is a grossly unlawful instrument of war and that no military necessity or advantage, no set of conceivable circumstances, however grave, can justify its use. Our fundamental reason for this conclusion is that the use of the hydrogen bomb—in populated areas, that is—inevitably involves the direct slaughter of innocent non-combatants. We might add, for completeness and to furnish a reply against possible objections, that the use of the hydrogen bomb should also be condemned as immoral—prescinding from the direct killing of non-combatants—on the grounds that it involves deliberate destruction which is out of all proportion to, or does not compensate for, any possible good which might be achieved.

We have mentioned some of these points particularly because we take it that any attempt morally to justify the use of the hydrogen bomb could only be along the lines of the principle of the double effect. This principle has been variously stated. In its simplest form it might be expressed thus :[2] it is lawful to perform an act which has good and bad effects, provided that this act docs not involve undue subordination, and provided also that the good effect attained is sufficient to compensate for the evil caused. By subordination in this context we mean the direct sacrifice of one good to another, and here particularly we are concerned with the sacrifice of human life to attain some purpose. Subordination is undue when it involves the

[1] We have had, of course, in recent years many Papal statements which clearly condemn some modem methods of military attack as wanton violations of the natural moral law.

[2] Cf. McDonald, *Principles of Moral Science,* pp. 200 et seq.

sacrifice of a life which by nature should not be sacrificed. It is an irrefragable principle of the natural moral law that it is never lawful for any human authority directly to take innocent human life. And it will be accepted that, even in the conditions of modern warfare, there are various categories of citizens who must be classed as innocent non-combatants.[1] If, then, the use of the hydrogen bomb necessarily involves the direct killing of these categories of citizens, there is undue subordination and no cause can justify the procedure. We shall show presently that the use of the hydrogen bomb would inevitably cause the direct slaughter of innocent non-combatants. But even if it could be demonstrated that this slaughter is indirect and unintentional, we still think that hydrogen bombing would be unlawful on the grounds that there would not be a sufficient cause to compensate for the evil effects.

When we set down the conclusion that the use of the hydrogen bomb is an unlawful method of waging war, we are assuming the truth of the statements of the scientists on the destructive effects of this bomb. We are assured by competent authorities that the hydrogen bomb is a thousand times more destructive than the atom bomb; that its explosive effects cover a very wide extent; that, moreover, the explosion causes the radiation of isotopes which bring destruction to all life, animal and vegetable, over an area of hundreds of square miles. If all this be true or nearly true—and we repeat that we speak on the assumption that it is—we fail to see how it can seriously be asserted that the deliberate use of the hydrogen bomb in populated areas does not directly and intentionally involve the death of innocent non-combatants. The hydrogen bomb is not just another weapon like the rifle or the cannon—the effects of which can largely be controlled and localized. What is directly achieved by the use of the hydrogen bomb? Is it merely the destruction of some military objective? Is it not rather the raining of death and destruction over a wide area—

[1] We cannot discuss this point in detail here. It is not necessary to do so. We refer our readers to a fine, courageous and well documented article on 'The Morality of Obliteration Bombing,' published by J. C. Ford, S.J., in *Theological Studies,* v (1944), pp. 261-309. In this article, Father Ford proves conclusively that the distinction between combatants and innocent non-combatants is perfectly valid even in the conditions of modem war. He holds that nearly three-fourths of the population belong to the non-combatant category and lists various groups which according to the natural law must be so classed. Many of the arguments advanced by Father Ford to prove his thesis that obliteration bombing is a violation of the moral law would, we think, demonstrate, with even greater force, the immorality of the military use of the hydrogen bomb. We are indebted to Father Ford's article at many points and shall have occasion to quote from it later.

a small part of which may, indeed, house a military objective—irrespective of the innocence or guilt of those who inhabit that area? This widespread death and destruction are, the scientists assure us, the inevitable results of the use of the hydrogen bomb. And what must be the intentions of those who would command the use of this bomb? It may, perhaps, be said that they do not intend the widespread destruction of non-combatants as an end in itself, but only as a means of terrorizing a people and thus of forcing their capitulation. But it can hardly be denied that they must directly *intend,* at least as a means, and not merely *permit,* the destructive effects which are the natural and inevitable results of hydrogen bombing. We must look at this matter realistically. What Father Ford wrote of obliteration bombing is in point here: 'Looking at obliteration bombing as it actually takes place, can we say that the maiming and death of hundreds of thousands of innocent persons, which are its immediate results, are not directly intended but merely permitted? Is it possible, psychologically and honestly, for the leaders, who have developed and ordered the employment of this strategy, to say that they do not intend any harm to innocent citizens? To many, I am sure, the distinction between the material fabric of a city, especially the densely populated residential areas, and the hundreds of thousands of human inhabitants of such areas will seem very unreal and casuistical. They will consider it merely playing with words to say that in dropping a bomb on a man's house, knowing he is there with his family, the intent is merely to destroy the house and interfere with the enemy production (through absenteeism), while permitting the injury and death of the family.'[1] Thus a consideration of the nature and effects of hydrogen bombing, as well as of the intention of those responsible for it, leads to the conclusion that the resultant destruction and slaughter of innocent non-combatants are direct and are, accordingly, intrinsically unlawful.

[1] Art. cit., p. 291. Father Ford quotes, in support of his view, from Dr. John A. Ryan's *Modern It'ar and Basic Ethics,* pp. 105 et seq. Dr. Ryan wrote: 'It is hardly correct to think and speak of the damage done to life and property in such situations as being "incidental destruction." Rather is it the realistic interpretation of this situation to hold that any good gained is incidental to the evil and that the phrase "wholesale destruction of property and civilian life" indicates the true relation between the good and evil effects involved. The evil effect is first, immediate and direct, while any military advantage comes through and after it in a secondary derivative and dependent way. As far as the principle of the double effect is concerned an attack upon a large city with the weapons of modem warfare is the direct opposite of such an attack with the weapons of earlier days.*

If this conclusion be correct, it is superfluous to consider the second condition in the principle of the double effect, that is the question of a compensating cause—for no cause whatsoever can justify what is intrinsically unlawful. The end cannot justify the means. But suppose, for a moment, that it be admitted that the slaughter of the innocent by hydrogen bombing is only indirect, and is not intended either as an end in itself or as a means, but is only permitted by those who order the operation; suppose, in other words, that there is no subordination of innocent human life—can it be said that there may be a cause which is sufficient to compensate for the dreadful results of this form of bombing? Recall again what the scientists state these effects to be—the holocaust, the shambles. Remember that these effects are inevitable, immediate and obvious. What kind of cause could compensate for them? Military necessity will be the cause alleged. But this cause might so easily prove too much or, contrariwise, might stultify itself; might become a boomerang.[1] For if military necessity be regarded as a sufficient compensating cause for one belligerent, this same cause will operate to justify hydrogen bombing by the other belligerent, and the field of destruction of innocent life and property is horribly extended. Thus this question of a compensating cause cannot be considered isolatedly, but in the light of the wider issues of the consequences which the recognition of the liceity of hydrogen bombing would entail for innocent humanity. These consequences are so terrifying, so far-reaching, so Frankenstein-like that we cannot conceive any attainable good which would compensate for them. To us, then, it seems that the only moral procedure, the only sane procedure, the only hope for the preservation of the structure of civilization is the acceptance of the fact that operations like hydrogen bombing are a crime against humanity and lie beyond the legitimate frontiers of licit methods of war.[2] To quote Father Ford again:[3] 'In practice, though one may adhere verbally to the distinction between innocent and guilty, the obliteration of great sections of cities, including whole districts

[1] Pope Pius XII has frequently mentioned these dangers as resulting from modern methods of waging warfare; cf. addresses quoted by Father Ford, art. cit., pp. 305-8.

[2] In an Allocution to the Cardinals in 1943, Pope Pius XII said: 'At present when the spectre of even more horrible instruments of destruction and death rises to test the souls of men, it is not superfluous to warn the civilized world that it walks on the edge of an abyss of unutterable dangers.' *A.A.S.*, xxxv (1943), p. 169.

[3] Art. cit., p. 303.

of workers' residences, means the abandonment of that distinction as an effective moral norm. When the innocent civil population can be wiped out on such a large scale, very little is left practically of the rights of the innocent. Each new and more terrifying procedure, with more and more loss of innocent life, can always be defended as a mere extension of the principle, justified by the desperate military necessities of the case. The wiping out of whole cities is a reversion to barbarism as far as civilian rights are concerned.'

We have referred earlier to an article by Fr. Francis J. Connell. We must regretfully disagree with some of the points made by this eminent theologian. He maintains that it would be lawful to use the hydrogen bomb against a target of supreme military importance in the vicinity of a large city even though it is foreseen that very many thousands of non-combatants would be killed. The destruction of such a military objective 'would be of supreme value towards winning the war, and hence *might* be sufficiently important to justify the concomitant and indirect harm to so many civilians.' An element of uncertainty and diffidence appears, however, in the author's use of the word '*might*' (italics ours). And he admits further, that the case mentioned is extraordinary. 'Apart from such extraordinary cases, it is difficult to see how it would be permissible to attack even a lawful military target with the H-bomb, if many thousands of non-combatants would in consequence suffer death or grave injury.' Fr. Connell states, too, that the hydrogen bomb may lawfully be used in the vicinity of a large city if the inhabitants are warned beforehand of the proposed attack and are given time to find adequate shelter elsewhere. It would be necessary, he considers, to name in the warning the city or cities which are to be attacked. These provisos seem to be impracticable and unrealistic. How far would any sort of effective evacuation be possible? Where would adequate shelter from the ravages of the hydrogen bomb reasonably be found? And might not the issue of these warnings eliminate the surprise element, give a tactical advantage to a prepared defence and thus lessen if not completely nullify any military value in the attack?

THE MORALITY OF CREMATION

THE CATHOLIC TEACHING

In recent times there has been a lot of discussion over here in regard to the practice of cremation. The occasion of the popularity of the discussion is, I think, the fact that the remains of a high dignitary of the Church of England were, some time ago, disposed of in this way, by request. Is cremation intrinsically wrong, in any sense ? It is hard to see that it is. We shall all, after death, return to dust and ashes eventually—some, perhaps, more quickly than others. Is it wrong to speed up an inevitable process ? Cremation seems to be a nice, tidy way of doing things. Please do not misunderstand me. I am looking for light, rather than pleading for cremation. Is cremation unchristian ? One would naturally expect that the leaders of a Christian Church would not countenance, much less be a party to, an unchristian practice. And so the cremation, presumably duly blessed and sanctioned officially, of the remains of a dignitary of the Church of England should make us pause in dubbing the practice as unchristian. Or should it ? What precisely is the attitude of the Catholic Church on this question of cremation ? What are the reasons for her attitude which, in general, I know to be one of condemnation ? Do her prohibitions extend to the cases of cremation of amputated limbs and other organs removed by surgical operations ? This last question will arise for hospitals and similar institutions. May a priest give ecclesiastical burial to remains which are to be or which have been cremated ?

Samagee.

Our correspondent who, as is obvious, writes to us from England, need not have feared that we would misunderstand him. We found his cheery approach to a rather macabre subject very refreshing. We hope that he, in turn, will not misunderstand us if we try, for a moment, to echo his cheeriness. In his search for light 'Samagee' has packed a nice, tidy bundle of questions into his letter. We do not know what the record number of questions for a letter may be—or if there is or could be any such record—but, in proportion to its length, our correspondent's letter should stand very high in a competition of this kind. We venture to suspect that 'Samagee' must have been an *enfant terrible* in his earlier youth before he settled down to read his R. W. Service. Or have we, after all, and despite our earlier protestations, misunderstood his *nom de guerre?*

We are very fortunate in that an Instruction on Cremation, issued by the Holy Office in 1926, contains material for the

answers to many of our correspondent's questions.[1] We also have a few other official declarations which are relevant and very helpful.[1] We shall, in our reply, take up one by one the various questions, mainly in the order in which they have been submitted to us.

Cremation is not intrinsically wrong. For grave reasons of public welfare, for instance in time of plague, or after great slaughter in battle,[3] cremation would certainly be lawful if necessary or useful for the prevention of infection.

Quamvis igitur cadaverum crematio, *quippe non absolute mala,* in extraordinariis rerum adiunctis, ex certa gravique boni publici ratione, permitti queat et revera permittatur . . . [4]

It is true, of course, that we shall all, after death, inevitably, return tb dust—but, if we may say so, only with the inevitability of gradualness. It is, in some circumstances, very wrong to speed up the inevitable. If it were not, euthanasia, for example, might lawfully be practised, and without any limitation—since death is in every case inevitable. We do not suppose that our correspondent meant his question about speeding up the inevitable to be of general application. But, as it is stated, it is open to this misinterpretation, and the argument implied is used by the advocates of euthanasia to bolster up their position. If we confine the question to the context of cremation, we should simply reply that it is wrong to speed up the inevitable return of human remains to dust and ashes in so far as cremation is wrong—not intrinsically wrong, therefore.

Is cremation unchristian? The Holy Office[5] describes it as a barbarous procedure which is contrary not only to the Christian but to the natural reverence due to the bodies of the dead, and which is completely out of harmony with the mind and constant discipline of the Church from the earliest times. These are strong words. There is no doubting their meaning. And so, despite the fact that the remains of a high ecclesiastiic of the Church of England have been cremated, our correspondent need not hesitate to dub the practice unchristian. Needless to say, no Catholic may accept any non-Catholic

[1] Instruction issued to all Local Ordinaries in Communion with the Holy See: [2] De Crematione Cadaverum'—*A.A.S.,* xviii, pp. 282-3. An English translation is given in Bouscaren, *Canon Law Digest,* i, pp. 564–5.

[3] Cf. Decrees of Congregation of the Inquisition, 1886, 1892, 1897.

[4] It is worthy of note that cremation was not used in the war of 1914-18, or, as far as we are aware, in the 1939-45 war; apparently it would not be regarded as an honourable way of disposing of the remains of soldiers.

[4] Instruction of Holy Office, 1926.

[5] Ibid.

Church as a *dux securus* in moral matters no more than in matters of faith. And perhaps we should point out in passing that the seemingly accepted teaching of the Church *of* England is, on some moral questions, particularly on questions which have reference to sex and marriage, not merely out of harmony with Catholic and Christian doctrine, but runs counter to the natural law itself. We should add, too, that the incident, which has given rise to this discussion—namely, the cremation of the remains of the late Archbishop of Canterbury—represents a break with tradition in the Church *of* England. It is the first case in which the remains of a high ecclesiastic of that Church have been cremated, at least with official sanction—though cremation is, and has been for some time, fairly popularly accepted in England. In this incident we seem to see the official passing away, in the Anglican Church, of another of the vestiges of the centuries-old Christian traditions which die hard, even in adverse circumstances. We regret that passing. The advocates of cremation are naturally jubilant.

The attitude of the Catholic Church regarding cremation has been expressed, on a number of occasions, in the condemnation of the practice by the Popes.[1] The Code of Canon Law sums up and restates these condemnations in a few words :[2] ' Fidelium defunctorum corpora sepelienda sunt, reprobata eorundem crematione.' It is clear, from what we have written earlier in this reply, that it is the general practice of cremation, apart from any grave reasons of public welfare, which is forbidden.[3] What are the reasons for this attitude of condemnation towards cremation ? There are very many reasons.[4]* We can state only some of them briefly. Cremation as a means of disposal of human remains runs counter to the traditional practice of Christianity. In the Old Testament, and in the New, we have reference to the burial of the dead. It is one of the corporal works of mercy. We have the example of the burial of Christ, and the metaphors of St. Paul which lend to inhumation a certain dignity and symbolism.

L'inhumation symbolise au vif cette identification morale du Christ et des fidèles.[6]

[1] Cf. various decrees and instructions referred to *supra.*

[2] Canon 1203, §1.

[3] This is noted in the Instruction of Holy Office, 1926.

[4] They arc stated fairly fully in an article entitled : ' Incinération,' in the *Diet. Apol. de la foi Cath.,* t. ii, cc. 628-44. Cf. Noldin, *De praeceptis,* nn. 717-8, Jorio, *Th. Mor.,* ii, n. 575.

[6] Art. cit., ' Incinération,' c. 634.

In the Instruction of the Holy Office, to which we have referred earlier in this reply, it is pointed out that the enemies of Christianity laud and propagate the practice of cremation for the sole purpose of gradually diverting men's minds from the thought of death and from the hope of the resurrection of the body, so that thus the way may be paved for materialism. Propagandists for cremation show, and have shown, anti-religious tendencies.

Les ennemis de l'Eglisc ont très bien saisi l'influence religieuse du rite de l'inhumation . . . à un symbolisme ils veulent substituer un autre symbolisme ; au symbolisme spiritualiste et chrétien, le symbolisme matérialiste et païen.[1]

This was particularly true of the advocates of cremation in the eighties of the last century—as the decrees of the Congregation of the Inquisition amply testify.[2] At that time, cremation and French Masonry were closely linked together, so much so that at one time advocacy of cremation was regarded as a declaration of Masonic membership.[3] Thus, for historical reasons, the doctrinal associations and implications of cremation are gravely offensive. Moreover, in normal circumstances, cremation seems to offend against a strong instinct of respect and reverence which men feel for the bodies of their dead.[4] In the Christian concept of human life, these bodies should be reverently treated, because of what they have been, the temples of the Holy Ghost, and because of what they are destined to be, the sharers with the soul for eternity in the Beatific Vision. Details of the procedure in a crematorium in Scotland were recently published. They indicated that the practice of cremation can easily lead to grossly irreverent treatment of human remains, and that it may not always be a nice, tidy way of doing things. The publication of the facts caused a good deal of uneasiness to the advocates of cremation.[5] The natural gradual process of the dissolution of human remains which results from burial is the more reverent in every way.[6] The violent process of cremation is normally totally

[1] Art. cit., c. 637.

[2] Cf. Decrees, 19 May 1886, and 15 December 1886. The latter is referred to in the Instruction of 1926.

[3] In France there were very active propagandists for the popularization of cremation. In 1880 ' Le Société pour la propagation de la crémation ' was established.

[4] Cf. what has been said about the military attitude—which is an indication of the natural human sentiment. In an address *supra,* 14 May 1956, Pope Pius XII underlined the obligation of respect for the human corpse.—cf. *Catholic Documents* xxiv.

[5] Articles in some English papers give evidence of this uneasiness.

[6] Cf. Noldin, loc. cit.

unnecessary. It is sometimes suggested that cremation is necessary for hygienic or practical reasons. And we have conceded that, in extraordinary circumstances, it may be thus necessary. But there is no adequate reason for saying that it is generally necessary. If the ordinary laws and by-laws of civilized communities in regard to their cemeteries be observed, there is nothing to fear hygienically from the inhumation of corpses.[1] The Instruction of the Holy Office had this argument from hygiene in view when it reprehended the daring of those—amongst them some Catholics—'who acclaimed cremation as one of the most outstanding achievements of so-called modern civil progress and the science of health.'[2] It is argued, too, that cremation prevents the burial alive of one who is only apparently dead. It may—but at what a risk! The person apparently dead is burned alive. It would, we think, be at least as pleasant to come back to consciousness in a grave as in the incinerator of a crematorium—*pace* 'Samagee's' prototype who felt merely warm! A representative writer has summed up a discussion on the necessity of cremation thus:

'Tout pesé, convenances morales et considérations d'ordre pratique, il n'existe donc aucune raison vraiment convainçante en faveur de l'incinération.'[3]

And, indeed, from the practical point of view inhumation may have advantages over cremation—for instance, in the juridical sphere for the discovery of crime. Exhumation has, on not a few occasions, revealed foul play, and has led to the discovery and conviction of murderers.[4]

If we may digress slightly for a few moments we would note here that, in this modern age, pseudo-scientists and social reformers have developed a craze, and a technique, for interfering with many of even the most sacred natural processes of human life—especially at the beginning and at the end of life. A short time ago children were more or less at a discount, having them was a nuisance, and so the unnatural practices of birth control and contraception were recommended

1 Noldin, loc. cit., writes: 'Unica ratio, quae contra ecclesiae morem urgeri posset, in eo consistit, quod ex corporum humatione periculum imminet publicae sanitati. Verum satis constat ex more terra condendi defunctos nullum oriri sanitatis periculum, dummodo coemeterium aptum locum occupet et in sepeliendis corporibus serventur cautelae ab ecclesia praescriptae.'

2 *A.A.S.*, loc. cit.

3 Art. cit., 'Incinération,' loc. cit., c. 642.

4 Cremation would destroy all signs of injury or poison—whereas these may be discovered in remains long after they are buried.

to parents. The eugenists, in their desire to improve the race, by eliminating the possibility of the begetting of defective children, advocated the sterilization of the unfit—again an undue interference with nature and natural rights. In a misplaced sympathy and eagerness to speed up the inevitable for the hopelessly and painfully diseased, euthanasia found many supporters. In very recent times, apparently some people are beginning to think that, in face of a declining population and the ravages of a total war, more babies will be essential to the welfare of the race, and so, to-day, the advocates of artificial insemination are in full cry.[1] They depict for us piteous pictures of the sad lot of the childless parents. The sympathy now is all for the childless, as in yesteryear it was for the child-bearing, and for the father of a family. In their anxiety to ease the hard lot of the childless, the advocates of artificial insemination (among whom are many medical doctors,[2] as the medical journals abundantly testify) do not hesitate to recommend methods of fecundation which are a complete travesty of the natural law, and which grossly outrage the unity and sanctity of the marriage bond and the conjugal act. Of many of these recommendations it may justly be said that they are the most daring attempt yet made to reduce man and his procreative powers to the level of the brute beast.

To return to our correspondent's questions: He asks if the cremation of amputated limbs is lawful? In the year 1897 a similar question was discussed by the Congregation of the Inquisition. The question was submitted by a Superioress of nursing Sisters. Apparently the custom of the Sisters was to bury amputated limbs in profane ground or, on the advice of the doctor, to burn them. They wished to know if they might continue that practice in the future, whether the patients who underwent the amputations were Catholics, non-Catholics or infidels. In submitting the question it was noted that it was very often morally impossible, and sometimes physically impossible, to have the amputated limbs buried in a cemetery. The reply given was:[3]

1 In almost every issue of the *British Medical Journal* for some time there have been letters on this subject; letters which, for the most part, were, in effect, propaganda for artificial insemination. The Catholic position has been ably stated in some letters.

2 This is a most regrettable fact. It emphasizes the need for sound training of medicals in the ethics of their profession. Medical etiquette, as it is commonly understood, is not a substitute for, but a part of, medical ethics.

3 *A.S.S.*, xxx, pp. 630-1.

Quoad membra amputata acatholicorum, sorores praxim suam tuto servare possunt. Quoad membra amputata fidelium baptizatoruin, pro viribus curent ut in loco sacro sepeliantur. Sin vero graves obstant difficultates quominus in loco sacro condi possint, circa praxim hucusque servatam non sunt inquietandae. Quoad membrorum combustionem, praecipientibus medicis, prudenter dissimulent et obediant. Et ad mentem mens est quod, si fieri potest, in proprio horto domui adnexo deputetur aliquod parvum terrae spatium, ad sepelienda membra catholicorum amputata, postquam fuerit benedictum.

This reply was approved by the Pope, Leo XIII, and its provisions apply to-day. The question and reply refer explicitly to amputated *members.*[1] But do the provisions cover also the disposal of other less important organs removed by surgical operation? We hardly think so, though it can at the same time be reasonably maintained, on general principles, that *all* human organs removed by operation should be treated with reverence.

Those who have given orders that their remains be cremated and who, on being warned of their obligation, do not before death retract these instructions and show signs of repentance, are unworthy of the last Sacraments and are to be deprived of ecclesiastical burial.[2] Accordingly, a priest may not give to such the funeral rites and public suffrages of the Church. This prohibition remains in force, even if, by reason of canon 1203, §2, the cremation of the remains does not actually take place.[3] If a person has ordered that his remains be cremated, it must be clear, in the external forum, that this intention has been retracted before ecclesiastical burial may be given. It is not lawful to rely on a mere presumption that the deceased, at the last moment of his life, made internally the necessary retractation.[4] In the case of those whose remains are cremated, not at their own request or command, but at the behest of others (say relatives or public authority), the funeral rites and public suffrages of the Church are not forbidden, provided danger of scandal can be, and is, efficaciously precluded. This

[1] In the question, there is reference to legs and arms. It may be well to quote it in part: "In singulis hebdomadibus evenit ut unius vel alterius aegroti brachium seu crus amputetur. Sorores adhuc bona fide eiusmodi membra recisa in terra profana sepelierunt, sive suadente medico combusserunt."

[2] Cf. Decrees of Congreg. of Inquisition, 1886, 1892, et Canon 1240, §1: "Ecclesiastica sepultura privantur, nisi ante mortem aliqua dederint poenitentiae signa . . . 5° qui mandaverint suum corpus cremationi tradi."

[3] Cf. *A.A.S.*, xvii, p. 583. Canon 1203, § 2, states that it is unlawful to obey the orders of one who ordered that his remains be cremated and that any proviso to this effect in a contract or will is to be ignored.

[4] Cf. Instruction of Holy Office, 1926. "Quum enim de hac coniectata retractatione nihil certo constare queat, nullam ipsius in foro externo rationem habere posse palam est."

danger may be avoided by a declaration that the cremation is being carried out, not at the personal request of the deceased, but at the command of others.[1] If there is no danger of scandal, the funeral rites may be performed in the home of the deceased and in the church, *non autem usque ad cremationis locum.*[2] In all cases in which the ecclesiastical funeral rites are forbidden, by reason of a request for cremation, it is equally forbidden to give the ashes ecclesiastical burial or to preserve them, in any way, in a blessed cemetery.[3] In accordance with canon 1212 the ashes are to be kept in a separate place.

Praeter coemeterium benedictum alius, si haberi queat, sit locus, clausus item et custoditus ubi ii humentur quibus sepultura ecclesiastica non conceditur.

If hostile civil authority should on any occasion insist upon the ashes being buried or preserved in the blessed cemetery, the priests concerned should resist, as far as may be possible, this open encroachment on the rights of the Church, and should abstain from any participation in the burial service.[4]

[1] Cf. Instr, cit.
[2] Decree, 19 May, 1886; cf. Ferreres, *Th. Mor.,* ii, n. 1329.
[3] Instruction of Holy Office, 1926.
[4] Ibid.

SECTION VI

SIXTH AND NINTH COMMANDMENTS

THE MALICE OF 'LUXURIA DIRECTE ET IN SE VOLUNTARIA'

The reading of a critique of a book, which advances unchristian ideas on sex matters, led to a discussion, among a few priests, as to how such doctrines could be met and rebutted on grounds of reason alone. Noldin was taken down but failed to satisfy. May I play the part of 'Devil's Advocate' and put you the difficulties experienced?

(1) To prove the natural malice of extra-matrimonial sex indulgence Noldin argues that the faculty of procreation was given us solely for the propagation of the race. To exercise it merely for pleasure is gravely to abuse it.

Objection: The faculty of eating and drinking was given us equally for the maintenance of life. Yet we lawfully use it not solely to sustain life but for pleasure. Similarly for all the sense faculties—sight, hearing, etc., beyond strict necessity we exercise them all, on occasion, merely for pleasure.

(2) Noldin argues that if sexual pleasure outside marriage were not forbidden people mostly wouldn't marry.

Objection: This does not cover people already married or people at present unable to marry, but willing and anxious to marry as soon as they can. Yet these are not free to indulge.

(3) The discussion went on to *parvitas materiae*. Noldin argues that there can be no parvity, as even the slightest indulgence necessarily leads to the complete sin.

Objection: This is simply untrue. Any confessor knows that people can, and do quite deliberately take impure pleasure in thoughts and minor acts yet check themselves 'when it is getting too bad.'

(4) Noldin quotes a proposition (n. 40) condemned by Pope Alexander VII.

Objection: This proposition is not condemned *ut falsa* but *ut ad minimum scandalosa*—a very different thing!

(5) Noldin urges the very general, though not universal, consent of theologians.

Objection: This consent is largely artificial. Jesuit theologians are forbidden, since 1612, to teach the lenient view. As Jesuit Manuals have been almost universally used in Catholic colleges such a consensus is the almost inevitable result.

Some light on the above objections would be greatly appreciated by

Perplexed.

Our correspondent, in his assumed role of 'Devil's Advocate,' raises difficulties against two points in the teaching of moral theology regarding the malice of extra-matrimonial sex indulgence. In particular he controverts the arguments advanced by Noldin[1] in support of that teaching. Before we discuss these arguments we must be clear as to what precisely the theologians teach. The subject is, from many points of view, a delicate one, and we sympathize with those who find it difficult.

All venereal pleasure has been essentially associated by nature with the acts whereby the human race is to be propagated. Its purpose, therefore, is the good of the species—not the good of the individual. Those acts of propagation may be lawfully performed only by a man and a woman duly united in a permanent marriage union. To seek any degree of venereal pleasure apart from legitimate matrimonial intercourse, and acts pertaining thereto, is deliberately to dissociate that pleasure from its natural purpose and concomitant; is to use it for the good of the individual and not of the species; is, therefore, to abuse the order of nature, and is intrinsically wrong. Theologians[2] describe the abuse of sex pleasure as *luxuria*[3]—and this vice they define as 'inordinatus appetitus vel usus delectationis venereae' and they usually add:[4]

Inordinatus autem est si extra usum legitimum in copula coniugali, et in actibus ad illam disponentibus, delectatio quaeratur.

Various distinctions are made: *luxuria interna* (forbidden by the ninth commandment); *luxuria externa* (forbidden by the sixth commandment). The latter is subdivided into *luxuria consummata et non-consummata.* We need not delay to explain the foregoing divisions. If the inordinate pleasure is sought deliberately (or is fully and freely consented to[5]) for its own sake, it is said to be directly, *et in se,* voluntary—otherwise it is only indirectly voluntary. Our discussion here is concerned solely with directly voluntary *luxuria.* The teaching of the moral theologians in regard to it might be expressed thus:

Omnis luxuria (extra matrimonium) directe et in se voluntaria, sive consummata sive non consummata, etiam minima, est intrinsece mala et quidem mortaliter mala et non admittit parvitatem materiae.

[1] We presume that the references are to the work *De Sexto Praecepto,* pp. 11-13.
[2] Cf. Noldin, op. cit.; Vermeersch, *De Castitate;* Priimmer, *Th. Mor.,* ii; Aertnys-Damen, *Th. Mor.,* i., et Merkelbach, *Quaestiones de Castitate et Luxuria.*
[3] We retain the Latin term.
[4] Cf. Merkelbach, op. cit., p. 23.
[5] Cf. Vermeersch, op. cit., n. 351 et seq.

We have framed this proposition[1] to embody the two points of doctrine impugned by 'Perplexed.'

In our introductory discussion, we have outlined the argument whereby it may be shown that all directly willed sexual pleasure is, apart from legitimate matrimonial intercourse, intrinsically wrong. It violates the order of nature established by God.[1] Theologians are unanimous on this point. Vermeersch writes:[1]

> Intrinseca malitia directe quaesitae vel admissae voluptatis venerae extra matrimonium inter catholicos non controvertitur : . . . . omnis motus venereus directe quaesitus vel admissus est . . . extra medium castitatis.

It is not necessary to elaborate the argument further at this stage. The reasons given later for the second point in the proposition will also serve as an argument, even *a fortiori,* in favour of the first point. For surely in showing that a thing is gravely wrong we show it to be wrong.

(1) We come now to the precise difficulties raised by our correspondent. The first argument attributed by him to Noldin is given by the latter, primarily, as an explanation of the special malice of *luxuria.*[4] But, that minor point apart, the first objection advanced is not valid, and for many reasons. There is nothing like a complete parity between the pleasure of eating and drinking, and venereal pleasure. The former has reference to the maintenance of individual life, the latter to the securing of the continuance of the human species.[5] Moreover, when we eat or drink for pleasure, the natural purpose of food and drink is not necessarily excluded or prevented. They can still serve to maintain life. Whereas, when extra-matrimonial sex pleasure is sought and indulged in, the pleasure is entirely and necessarily divorced from the natural purpose of the act. It does not, it cannot, serve the species by the due propagation of the human race. Finally, it is not true to say that we may lawfully eat or drink, or exercise any of the other natural faculties, for pleasure *alone.* In other words, we may not positively exclude the natural purpose of the acts of those faculties and seek pleasure exclusively.[6] These acts may, indeed, be performed *cum voluptate*—but so also may acts pertaining to legitimate conjugal

*A somewhat similar proposition will be found in the authorities mentioned earlier.

* *Medium ad finem a Deo homini impositum est ut *ordinem* essentialem servet relate ad Deum, ad proximum et in seipso . . . Luxuria autem, ex natura sua violat ordinem essentialem rerum.'—Merkelbach, op. cit., p. 26.

[3] Op. cit., n. 352.

[4] Op. cit., n. 11.

* Cf. Merkelbach, op. cit., pp. 31 and 37.

* 'Delectationes naturales de se non sunt moraliter bonae vel malae, nisi prout eliguntur conformiter ad rationem rectam vel non conformiter.'—Ibid.

intercourse. We may recall here two propositions condemned by Pope Innocent XI, *tanquam scandalosae et in praxi perniciosae.* The propositions are[1]

Comedere et bibere usque ad satietatem ob solam voluptatem non est peccatum, modo non obsit valetudini ; quia licite potest (quis) appetitus naturalis suis actibus frui. (2) Opus coniugii ob solam voluptatem exercitum omni penitus caret culpa ac defectu veniali.

(2) Noldin gives several arguments[2] from reason to prove the *grave* malice of directly voluntary extra-matrimonial sexual pleasure. Our correspondent here concentrates on one—and, perhaps, the weakest,[3] for it does not give the fundamental reason which shows the malice of the vice under consideration. But we think it was intended by Noldin to be merely supplementary. It was introduced to show the gravity of the effects which might follow if extra-matrimonial sex indulgence were not gravely prohibited. In reply, then, to the objection that this particular argument does not cover all cases, we might say: even if this be granted, there are other more fundamental arguments which do cover all cases. It is scarcely necessary to remark that it is not merely by entering the marriage state, but by the proper performance of the duties of that state, that the human race is duly propagated and the purpose of nature achieved. Perhaps, too, the principle of law expressed in the canons[4] might be invoked in favour of the universal validity of NoIdin's argument.

The objector, in arguing about the second class of people mentioned, seems guilty of *petitio principii.* For he assumes that many people would still be willing and anxious to marry, even if extra-matrimonial sex indulgence were not forbidden. How does he know? The argument of Noldin, which is being rebutted, is precisely that many would be anxious to avoid marriage. And it is not necessary for the force of NoIdin's argument that all would avoid marriage. His argument stands if a considerable number would avoid it—and who, knowing human nature, could categorically deny that such a number would ?

[1] Denzinger-Bannwart, 1158, 1159.

[2] Op. cit., n. 11, 1°.

[3] ' Insuper graviter illicitum est, quod, si non prohiberetur, in gravissimum damnum cederet generis humani ; atqui si homines licite possent frui delectatione venerea et hac ratione concupiscentiam sedare extra matrimonium, onera matrimonii cum gravissimo detrimento generis humani plerique recusarent . . .'

[4] Canon 21. Leges latae ad praecavendum periculum generale, urgent, etiamsi in casu peculiari periculum non adsit. The law of nature does not merely command us to avoid injury to our neighbour and society ; it commands us rather to observe a certain order lest such injury arise.

(3) The question of parvity of matter is more difficult.[1] The proposition we have given above expresses the almost unanimous teaching of present-day moral theologians. There cannot be, they say, *ex parte materiae,* a venial sin of directly voluntary extra-matrimonial venereal pleasure. That is not to say, of course, that such pleasure may not be a venial sin on other counts—*ex imperfectione actus.*

Merkelbach[2] gives the following argument for the current teaching—we must quote at some length :—

> Luxuria incompleta etiam minima, dummodo sit in se volita, est mortaliter mala. Ratio generalis est quia cuique impossibile est quaerere delectationem vencrcam incompletam quin implicite quaerat et velit completam et eius deordinationem incurrat vel affectum ad completam luxuriam habeat. Etenim :
>
> Omnis actus venereus qua talis habet essentialem ordinem ad copulam coniugalem seu ad actum perfectum legitime in matrimonio exercendum, cuius est naturale initium et praeparatio. Atqui omnis delectatio venerea extra matrimonium quaesita tollit ordinem istum et in bonum individuale ordinat id quod bono speciei destinatur. Ergo omnis delectatio venerea extra matrimonium quaesita indebite ad bonum individuale tendit et tollit essentialem ordinem ad speciem humanam. Sed talis inordinatio est intrinsece et graviter mala, quia est inversio ordinis essentialis qua actus speciei quasi opus singularis hominis exercetur et relate ad maximum bonum : conservationem societatis, subordinatio violatur qua homo qui est pars speciei sub specie constituitur ; qui ordo, quia hac in materia ipsi societati humanae essentialis et necessarius, sub gravi est praescriptus. Ergo omnis actus venereus extra matrimonium quaesitus est intrinsece et graviter malus.[3]

This is only one of several arguments advanced. All the theologians remind us that incomplete venereal pleasure is physiologically of the same nature as the complete pleasure, indulgence in which, outside marriage, is always gravely wrong.

[1] Cf. Vermeersch, loc. cit.

[2] Op. cit., p. 25.

[3] In Aertnys-Damen the argument for the teaching is briefly stated thus : ' Omnis usus inordinatus venereorum ex se repugnat bono speciei humanae ; omnis namque talis usus ex se actum facultatis generativae . . . privat fine suo operis, generatione et educatione prolis. Atqui talem deordinationem directe seu in se velle necessario semper grave peccatum constituit ; semper enim graviter repugnat dilectioni proximi, quae repugnantia secundum S. Thomam reatum gravem involvit.'—Op. cit., n. 599.

Vermeersch, who is critical of other arguments, gives the following proof : [1] Omnibus fatentibus, quilibet motus venereus, qua talis, ad copulam coniugalem seu ad actum perfectum legitimum ordinem habet essentialem et quidem ipsa facultate venerea definitum : est naturale eius initium ac praeparatio.

[2] Omni autem deliberate quaesita aut admissa delectatione venerea extra-matrimonium, ordo iste facultatis tollitur ; atque in solum bonum individuale, contra relationem ad speciem, usus venereorum quaeritur vel acceptatur . . .

[3] Omnis autem actus contra ordinem inducit gravem reatum, quando ordo iste essentialis est et substantialiter violatur. Ergo gravis reatus omni deliberate quaesita aut admissa delectatione venerea extra matrimonium inducitur.'—Op. cit., n. 353.

While *luxuria non consummata* may not necessarily lead to *luxuria consummata,* yet the former is by nature intrinsically connected with, and directed to, the latter, irrespective of the intention of the agent. Therefore one who deliberately indulges in *luxuria non consummata* desires, implicitly at least,[1] or reveals, an affection for the consummated pleasure. Thus, in the accepted teaching of the theologians, all directly willed extra-matrimonial sexual pleasure, no matter how slight, cannot be considered entirely apart from, or out of relation to, the completed pleasure of which it is the natural beginning, towards which it leads (though it may not reach it), as to its proper terminus, by an intrinsic conation. In each and every deliberate use of venereal pleasure outside marriage there is a grave deordination[2]—a violation of a primary precept of the natural law. It is argued, too, that *luxuria non consummata directe voluntaria* is gravely sinful by reason of an evil intention,[3] by reason of the fact that it is, in view of man's evil and vehement propensities, a dangerous occasion of the consummated sin, and also, perhaps, by reason of scandal.[4] But these latter are secondary arguments and are not, to our mind, universally valid.

We have indicated some of the reasons given by the theologians for their contention that there can be no parvity of matter when venereal pleasure is directly willed outside marriage. If such pleasure is only willed in cause, or indirectly, there can, of course, be parvity of matter and, therefore, venial sin *turn ex parte materiae, tum ex imperfectione actus.*[5] But let us return to our correspondent and to Noldin. The latter has written :[6]

> Delectatio venerea directe volita non admittit parvitatem materiae, ideoque semper, quantumvis exigua et brevis, mortale peccatum est. Nam in qualibet, etiam brevi et exigua delectatione venerea tota illa inordinatio invenitur, de qua supra dictum est. [He had written earlier 'Gravis inordinatio est aliquid quod ordinatur in bonum speciei et novi hominis existentiam pro solo commodo privato usurpare.] Insuper quaevis delectatio venerea directe quaesita vel libere admissa, quamvis exigua hominem exponit periculo proximo graviter peccandi ; delectatio enim venerea semel libere admissa vel quaesita naturali vi et necessario rapit ad delectationem completam.

Our correspondent concentrates on this last clause. He denies

[1] Cf. St. Thomas, *S.T.,* 1–2, q. 1, a. 6.
[2] 'Ex hoc quod ordo essentialis violatur luxuria est intrinsece mala ; ex hoc quod violatur ordo *necessarius* et essentialis ipsi societati est graviter mala.' Merkelbach, op. cit., p. 27. Cf. St. Thomas, *S.T.,* 1-2, q. 88, a. 2.
[3] St. Thomas, *S.T.,* 1-2, q. 74, a. 8; Noldin, op. cit., p. 13.
[4] Cf. Priimmer, op. cit., n. 682.
[5] Cf. Authors cited above.
[6] Op. cit., n. 11, 2°.

its truth. We agree—at least if the words are taken in their obvious sense. It may be, however, that Noldin merely wished to point to the fact, mentioned earlier, that non-consummated and consummated venereal pleasure are naturally and closely related, are physiologically of the same species. There is no denying that deliberate indulgence even in slight venereal pleasure is a dangerous occasion of indulging in the complete pleasure.[1] We have at best only a political, not a despotic, control over our passions, and when we deliberately begin to indulge them the force of that control is greatly lessened. That is particularly true in regard to sexual pleasure. Once this pleasure is deliberately aroused, it is often morally impossible to delimit or check it—by its native intrinsic force the incomplete seeks, reaches out for, the complete. Little wonder, then, that we regard as fatuous the opinion of the theologian of former days who maintained that sexual indulgence equivalent to an eighth of the consummated pleasure was light matter! But all that is not to say that all incomplete sexual pleasure, which is directly voluntary, necessarily leads to the complete act. Experience shows that it does not—always. The argument quoted from Noldin is, therefore, incomplete. But the teaching of theologians, we need hardly recall, does not rest on that argument alone. When our correspondent refers to what every confessor knows we presume he does so merely to refute Noldin's contention that the slightest deliberate sex indulgence leads *necessarily* to the full pleasure. For the fact that people may think that it is not serious to take deliberately impure pleasure in thoughts and minor acts is not a proof that there is here parvity of matter. It may rather be evidence of an erroneous conscience or of confusion of venereal with sensual pleasure[2]—t which later indeed, may, or may not, be gravely sinful. The term 'impure pleasure' may, perhaps, be used to cover both venereal and sensual delectation.

(4) Noldin, in a footnote, quotes a condemned proposition in support of the doctrine we have been considering. The proposition is[3]

Est probabilis opinio, quae dicit esse tantum veniale osculum habitum ob delectationem carnalem et sensibilem, quae ex osculo oritur, excluso periculo consensus ulterioris et pollutionis.

[1] St. Thomas wrote of the contrary opinion: 'Isti opinioni contradicit communis opinio modernorum et videtur in periculum animarum vergere, cum ex consensu in talem delectationem homo in peccatum *promptissime* incidere possit.'—*Quaes. Disp., De Veritate,* xv, a. 4.

[2] There is evidence of this confusion even among some of the earlier theological writers. To this confusion some modern authors attribute the sporadic teaching on parvity of matter.

[3] Denz.-Bann., n. 1140.

But Noldin recalls that the writers do not agree as to the meaning of the proposition. He advances no personal opinion on the matter. He does, indeed, quote Viva[1] as maintaining that the proposition is false inasmuch as it states that directly voluntary venereal pleasure may be only a venial sin. But this interpretation clearly assumes what is to be proved. There are other reasons why the proposition may have been condemned. Moreover, as our correspondent remarks, it was only condemned *ut ad minimum scandalosa.*[1] *We* agree, then, that it cannot be cogently argued from the condemnation that ecclesiastical authority has rejected as false[3] the view of those who say that there can be parvity of matter *in luxuria directe voluntaria.* Merkelbach, who also quotes the proposition, has the following comment :[4]*

Etiam si opinio tenens dari parvitatem materiae in luxuria directe et in se volita esset speculative probabilis practice improbabilis esset ; et haec videtur esse ratio cur propositio 40a damnata fuit ab Alexandro VII, quia falso supponit osculum habitum ob delectationem carnalem, id est venereum, non inducere periculum consensus in actus graviores.

The same author refers[6]* to a decree of the Holy Office, in 1611, in which we read : 'Cum in rebus venereis non detur parvitas materiae . . .'

(5) In regard to the final objection raised by our correspondent, Noldin has written :·

Ex illo tempore (anno 1612) haec sententia non esse parvitatem materiae in delectatione venerea directe quaesita, inter moralistas facta est communissima.

That is merely a statement of fact. It is true that in the year 1612 the General of the Jesuits forbade any member of the Society to admit the more lenient view as even tolerable. Strangely enough we find that, almost fifty years later, the Roman authorities of the Society wrote to the Franco-Belgian Province in the following terms :

Vir doctus qui se accusat de venereis tamquam de peccatis sua opinione (quam non vult deserere) solum venialibus ob levitatem materiae (non obstante decreto citato) a confessario Societatis absolvi potest et debet.'

Some of the older writers[8] did maintain that there could be

[1] Op. cit., p. 13.
[*] Dcnz.-Bann., loc. cit.
[4] Cf. Waffelacrt, *De Virtutibus Cardinalibus,* η. 191.
[•] Op. cit., p. 29.
[4] Ibid, ad calc.
[4] Op. cit., n. 11, 2°, c.
[6] Cf. Vermcersch, op. cit., n. 352.
[4] Among those quoted are J. Sanchez, Cardenas, and Caramuel—the latter was called by St. Alphonsus *princeps laxistarum.*

parvity of matter in *luxuria directe voluntaria* —yet, even prior to 1612, the consensus of opinion was vastly in favour *of the* view now held almost unanimously. We have quoted earlier from a decree of the Holy Office in 1611 a sentence which expresses the common view. T. Sanchez, who died in 1610, has written *:

Tamquam certissimum tenendum iudicamus, nullam reperiri parvitatem materiae in delectatione venerea.

St. Thomas expressly teaches that every deliberate venereal pleasure outside marriage is gravely wrong. In one of the "Disputed Questions" he writes :1

Tactus, amplexus et oscula . . . in quantum ordinantur ad solam delectationem consequuntur consensum in delectationem quae est peccatum mortale.

We find the same doctrine in the *Summa.*3 Commenting on a passage from the *Summa,* Cajetan writes :4

Si consensus in delectationem fornicationis cogitatae est peccatum mortale, a fortiori consensus in delectationem fornicationis inchoatae, seu consensus in delectationem quae est principium aut pars delectationis fornicariae.

In recent years a writer has expressed5* the view that incomplete venereal pleasure—even when directly willed—is, *ex se,* venial. It may, of course, be gravely sinful, but only *per accidens*— by reason of the danger of consenting to the complete pleasure, or by reason of scandal.

Motus incompleti . . . tantummodo sunt pracambula ; actum generationis tantummodo remote, mediate, accessorie attingunt . . . et ad illum nonnisi accidentaliter pertinent.·

The pleasure of the completed act is called venereal, in the strict sense, by this writer. It is, he maintains, specifically distinct from sexual pleasure—which is that of the incomplete act.7 On the basis of this distinction the above principles have been formulated. But the distinction is, in the opinion of those competent to judge, physiologically unsound, and thus the principles based upon it cannot stand.

There is no doubting that the prohibition of 1612 played a part in securing the very general agreement of theologians on the moral teaching under consideration. But there is, as we have seen, evidence of considerable agreement before that date.

1 *In Decalogum,* 5, c. 6, n. 12.
* *De Malo,* a. 2, ad 18.
3 1, 2, q. 153, a. 2, 3 ; q. 154, a. 4.
♦ *In* 2, 2, q. 154, a. 4 ; cf. 1, 2, q. 74, a. 6 et 8.
§ Laarakkers in a work entitled : *Quaedam Moralia quae ex doctrina D. Thomae selecta* (1928). We have not seen this work. We depend upon Merkelbach, op. cit., for our summary.
• Laarakkers, op. cit., p. 62, apud Merkelbach, p. 31.
» Ibid., p. 49, 50.

We would not subscribe to the suggestion that the almost unanimous consent in regard to the doctrine is largely artificial. The suggestion implies that moral theologians—and they are by no means all Jesuits—have been for centuries, and still are, prepared to stultify themselves merely to conform to a view warranted by no more fundamental argument than a wide acceptance. It is implied that these theologians have calmly dared to assume the responsibility for multiplying mortal sins, to teach a very difficult and unpopular doctrine on a matter that figures large in human life, and to reject the various arguments for the lenient view—and they have dared to do all these things without reasons which, in their totality and in practice at the very least, appear to them as valid and cogent proofs for their doctine. Such an attitude would be entirely incompatible with intellectual honesty, a sense of responsibility and human consideration—qualities which, we hope, our correspondent will not deny to the whole tribe of moral theologians.

MORALITY OF MODERN DANCES

I have heard it stated that the vast majority of modem dances which are now commonly danced in this country are seriously immoral and suggestive and therefore are to be regarded as a dangerous occasion of grave sin—an occasion which one is gravely bound to avoid.

Would you please comment on this statement ?

Senescens.

We are naturally unable to give any first-hand judgment on modern dances. But it seems to us that it is a completely unwarrantable generalization to describe the vast majority of the dances which are performed in our halls as being, in themselves, dangerous occasions of serious sin.[1] The fact is that many good and conscientious Catholics—the not so young as well as the young—can, and do, take part in modern dances without scruple or fear of sin. When they attend these dances they do not feel that they are going into an occasion of sin. Indeed they would be greatly shocked at the suggestion that they are. We are assured that not a few of the people who regularly attend dances are daily communicants.

We understand, however, that it is unfortunately true that

[1] The principle given by St. Alphonsus, *Theol. Mor.* iii, n. 429, may be taken to have a general application : ' Choreae, nisi malo fine fiant . . . secundum se non sunt malae, nec actus libidinis sed laetitiae.* Cf. Aertnys-Damen, *Theol. Mor.,* n. 495.

some modern dances are, by reason of the manner of acts and gestures which constitute the execution of the dance, seriously suggestive of forms of sexual indulgence. We cannot say how commonly such dances are performed in this country. We should like to think that they are seen rarely, *if at* all, in our dance halls or ballrooms and that those who indulge in them are regarded as 'cheap.' There is, of course, an obligation to refrain from such dances, and those responsible for hallsand organizations should ban them.

It is also true that, by reason of extrinsic considerations, even when there is nothing wrong with the dances in themselves, dancing may become a serious occasion of sin. Evil-minded persons can, we believe, suggestively perform almost any kind of dance—even the old-time ones. But such suggestive performance is not at all of the essence of dancing generally, and will be frowned upon and outlawed by decent-minded persons. Again the excessive consumption of intoxicating drink at dances—a procedure which is regrettably far from being uncommon-will easily make a dangerous occasion of what would otherwise be a harmless pastime. Another extrinsic count on which, we think, dances may become a dangerous occasion, is the hours at which they are held. In this matter we in Ireland have a poor record. There is hardly any other country in the world in which all-night dances are allowed as they are in Ireland. In other countries dances regularly end at 11 p.m. or at midnight at the latest. In Ireland, in many areas, by some chronic custom, dances really begin about these hours and continue well into the early morning. There are, we feel, moral dangers involved in such a time arrangement. There are also other consequences which should be kept in mind. People, especially young people, who participate frequently in these all-night dances run some risk of losing their health and they cannot be capable of fully efficient discharge of the work which many of them will be called upon to do on days following upon sleepless nights. All-night dances as they are arranged in this country seem then to be foolhardy as well as being liable to give rise to moral dangers. There seems to be no good reason whatsoever why dances should not begin and end, here as elsewhere, at reasonable hours. Those in authority might well consider what steps could be taken to achieve this. In recent years some of the Irish Bishops have made regulations prescribing that dances in their dioceses should generally end by midnight. These regulations, we gladly record, are being loyally honoured.

STATE REGULATION REGARDING LATE DANCES

Could it be reasonably maintained that the State would exceed its legitimate powers if it were to enact a law demanding that in all, or in most cases, public dance halls should close down at midnight ?

C. E. B.

We see no reason why the State, in the interests of the common good, could not legitimately make a law or regulation such as that mentioned by our correspondent. Of course it would be better if a reasonable attitude on such matters were adopted voluntarily by all concerned, and if the intervention of the State authority were thereby rendered unnecessary. As we pointed out previously, there seems to be no doubt that the institution of all night dances, which is so common in this country, can militate against the common good in various directions.

THE MORALITY OF KISSING

I have been on several occasions surprised at reading in Catholic publications for girls, statements to the effect that ' kisses between a boy and girl are to be deprecated *except* in the case of those who are genuinely fond of one another.'

I understood that theologians were agreed that kisses between young people who have not the intention of marrying one another are, ordinarily, at least venial sins ; and the fact that they are ' genuinely fond ' of each other makes such kisses more, and not less dangerous.

I should be glad to know whether there has been a development of theological teaching on the point, or whether our bright young things of to-day are so far elevated above their parents that what created some danger for the parents creates no danger at all for their children ? Thanking you in anticipation.

Oldfashioned.

Our correspondent has packed a number of questions into his short letter. As these questions are, however, connected we shall deal with them together.

Kissing is usually listed under the class of acts known as *actus impudici.*[1] These acts, in themselves, are, as a rule, indifferent.[2] If they are done for a good purpose and for a reasonable cause they are lawful. They may, on the other

[1] Cf. Noldin, *De Sexto Praecepto,* n. 51 et seq. ; Merkelbach, *De Castitate et Luxuria,* q. v. ; Vermeersch, *De Castitate,* n. 387 et seq.

[2] Cf. Aertnys-Damen, *Th. Mor.,* i, 632-3 ; cf. also authors referred to above.

hand, be mortally or venially sinful if they are done with an evil intention, if they cause direct or indirect scandal, if they arouse venereal pleasure and involve danger of consent thereto—if there is not a sufficient cause to compensate for the indirect scandal or danger. The degree of danger of venereal pleasure and consent will depend upon many individual factors, particularly upon the character and dispositions of the persons concerned, and upon the nature of the acts committed. It is obvious that some *actus impudicitiae* are a greater incitement to venereal pleasure than others. And it is equally clear that some persons have passions which are very easily aroused and are with great difficulty controlled,[1] while others are cold, detached and almost insensitive to less gross stimuli. It follows that, in estimating the malice of particular *actus impudicitiae,* individual factors must be taken into account.[2]

Speaking generally, however, it may well be that young people to-day are less sensitive than their parents in regard to temptations against chastity arising from some *actus impudicitiae.* Thus not a few of the fashions in dress accepted today as decent and relatively modest would doubtless have been regarded as indecent, and would have been a source of temptation to very many, thirty years ago. A somewhat similar statement might be made in regard to dancing. We find this change in the outlook and reactions of people in regard to dress and dancing reflected in the teaching of the theologians. It is not that the theological principles have been altered, but in applying these principles today new factors have to be taken into account. On the question of dancing we find, for instance, that Gury lists the waltz, the galop and the polka as *choreae inhonestae, quae possunt esse graviter illicitae.* In Gury's day these dances were modern. *Saltationes recentiores,* he calls them! Recent writers describe these same dances as comparatively harmless. Needless to say we are not holding any brief here for the modern developments of dance and dress. We merely point to consequences which have resulted from these developments. It is not that young people today are 'far elevated above their parents' in the sense of being more spiritual or less inclined to sin. We are, in fact, frequently told that the contrary is rather the case. We are not sure of the truth of this general

[1] 'Aliquando enim etiam si de se leviter influant in motum venereum propter hominis fragilitatem possunt esse periculum consensus pro eo, vel, gravis scandali pro aliis.' Merkelbach, loc. cit; cf. St. Thomas, *S.T.,* 2, 2, q. 154, a. 4.

[2] Noldin, op. cit., n. 55.

indictment of modern youth. But, however that may be, it is undoubtedly true that young people today are not appreciably tempted by many of the customary factors of modern life—factors which would have been a serious temptation to former generations. There is a well known psychological principle that the unusual, the novel, the extraordinary, attract and allure more than the customary or ordinary. When, then, the unusual becomes the customary it loses its allurement to some extent at least. *Assueta minus alliciunt.*[1] That principle may, we know, be pressed to lead to ridiculously extreme conclusions—as it is, for example, by the advocates of nudism ; but it is true within its due limits.

Coming back to the central question in 'Oldfashioned's' letter : it is clear from the principles we have stated earlier that kisses may be gravely sinful or venially sinful—or they may be lawful. NoIdin's teaching will be generally acceptable. He writes :[2]

(1) Oscula morosa saepius repetita cum magno affectu impressa inter personas diversi sexus, *ordinarie* gravia peccata sunt, quia valde commovent : praeterea saepe ex affectu libidinoso procedunt : inter solutos enim raro aliam causam habent. Fieri tamen potest ut gravia peccata non sint. . . .

(2) Oscula decentia, quia fiunt iuxta morem patriae, urbanitatis, amicitiae, cognationis causa vel ad honestum amorem significandum et augendum etiam inter personas diversi sexus, licita sunt quamvis motus carnales excitentur, modo caveatur consensus in delectationem venereum.

(3) Oscula decentia quae nulla causa necessitatis vel utilitatis cohonestante ex ioco, levitate vel etiam ex affectu sensuali fiunt, levia peccata sunt, si delectatio venerea nulla aut citra provisionem oriatur, et si ab illis actionibus ob periculum consensus cessetur, ubi eiusmodi delectatio percipiatur.

The specific point we are to consider here is whether kisses between young people who have not the intention of marrying each other are always sinful—at the least, venially sinful. It will, we think, be agreed unanimously that indulgence in these acts will often be fraught with some degree of danger which is unnecessarily incurred, and they will, therefore, often be at least venially sinful. And the fact that the parties are genuinely fond of each other may, indeed, as our correspondent suggests, increase the danger. Vermeersch writes :[3]

Magis incentiva sunt oscula, etiam honesta, quibus amor significatur. Horum honestas ex amoris honestate aestimanda est.

[1] Cf. Davis, *Moral and Pastoral Theol.*, ii, p. 251 ; Priimmer, op. cit., i, n. 612. St. Alphonsus, *Th. Mor.*, vol. ii, n. 55, writing of women's dress *{denudatio pectoris)* says in reply to Roncaglia : [4] Patet quod consuetudo sic incedendi, nonquidem dat ius ad id quod est contra ius naturale, sed bene diminuit vim concupiscentiae ---"

[2] *Op.* cit., n. 56.

[3] Loc. cit.

At the same time we think it can reasonably be maintained that these acts are not always necessarily sinful. They may sometimes be included amongst the second class mentioned by Noldin,[1] 'oscula decentia iuxta morern patriae ad honestum amorem significandum.' There can be genuine and upright affection between two people of different sex, without any immediate intention or consideration of marriage. And, moreover, for some, *oscula decentia, obiter facta,* involve no appreciable danger of arousing and of giving any consent to venereal pleasure.[2] The opinion we have expressed seems to us to follow from the general theological principles in regard to *actus impudicitiae.*[3] Our correspondent seems to agree with us that the acts in question are not necessarily sinful, for he writes that they are *ordinarily* at least venial sins. Along the same general lines Ferreres writes :[4]

Non statim arguendi sunt de peccato, ac multo minus de gravi, juvenes utriusque sexus qui in nonnullis jocis decenter et sine prava intentione se invicem amplexantur.

But he adds, and all will approve,

quamvis ab ejusmodi ludis ob periculum eis adnexum avertendi sint.

It is hard in practice, *in materia tam lubrica,* to fix the line between what is sinful and what is not—there are the varying human factors to be considered. The transition from what is not sinful to what is sinful is easy ; there is a very real danger of self-deception—consequently, the safer course is to be recommended in practice. Vermeersch gives the following advice :[5]

Oscula practice absolute prohibenda sunt iis qui inter se tractatus matrimoniales non habent - - - ; maxime autem iis inter quos suspectus vel minus honestus amor exstitit.

[1] Loc. cit.

[2] Cf. Noldin, op. cit., n. 54. Priimmer, *Th. Mor.,* ii, n. 691, writes : 'Tota malitia horum actuum consistit in periculo delectationis venereae sine sufficient ratione suscepto.'

[3] We presuppose that these acts were not committed from a sinful intention and that there is no scandal. St. Alphonsus struck a very human note when he wrote, in a slightly different context: 'Cum ego munus concionatoris gessi, pluries etiam hunc perniciosum usum (mulieres ad sui ornatum ostendentes, ubera) fortiter conatus sum exprobrare ; sed cum hic officium agam scriptoris de scientia morali oportet ut dicam quod iuxta veritatem sentio, et quod a DD. didici,' *Th. Mor.,* l, ii, n. 55.

[4] *Th. Mor.,* i, n. 519 ; cf. Jorio, op. cit., ii, n. 247.

[5] *Th. Mor.,* iv, n. 129.

DUTIES OF PRIESTS REGARDING DANCES AND FILMS

I should be grateful for replies to the following queries

(i) Since dancing is the cause or occasion of so much sin and since the priest alone, being the official guardian of morality in the parish, can effectively supervise the dance hall and its surroundings, what are his obligations in this respect especially regarding non-parochial dances.

(ii) Since 90 per cent, of modem films portray scenes of passion, presumably sinful, is the priest justified in showing such films in his hall ?

Sacerdos.

It would be very difficult, if not impossible, for a priest personally to supervise a dance hall and its surroundings, particularly when there is question of non-parochial halls. Indeed, as a general rule, the wisdom and value of any such supervision, even if it were possible, may well be queried. There might easily be grave misunderstanding. We do not know what form of supervision the correspondent has in mind, but we can easily imagine forms which would be highly objectionable from many points of view. The priest has, of course, a duty to safeguard, as far as he can, the good morals of the people entrusted to his care. In the long run the most effective way, and perhaps the only effective way, of doing this, is by endeavouring to create among his people a good public moral spirit regarding the decencies of life. The priest can create this spirit principally by instruction, in which the liceity and value of healthy and reasonable recreation and amusements are clearly admitted, but in which also emphasis is laid upon the necessity of observing the moral law in every phase, and at every level, of human conduct. We may recall a passage from the Maynooth Statutes which is relevant to both the questions submitted by ' Sacerdos ' :

Fideles prorsus devitent quidquid bonis moribus detrimentum affert : spectacula, theatra, cinematographa, nisi sint probata, ne adeant ; saltationes et choreas modestiae Christianae repugnantes omnino fugiant et etiam honestas ad multam noctem generatim ne protrahant, iisque moderate tantum indulgeant.[1]

The priest should try to ensure that all dances in his parish are properly conducted. He can do something in this direction, even in regard to dances in non-parochial halls, by appealing to the organizers who, generally speaking, if approached with prudence and tact, will be anxious to co-operate in the

[1] n. 219, § 1.

elimination of abuses from the halls and areas under their control It may be possible also to provide attractive amusements and dances in parochial halls. It is particularly important to make this provision when the other available places of amusement are not properly conducted or controlled. The priest will be able to take a more immediate interest in the functions in the parochial halls, and an active and well-directed parish committee will do much to ensure that any unseemly conduct is frowned upon and outlawed. But it is well to remember that supervision, though necessary and valuable, can only be a partial preventive of sin and is no substitute for instruction, guidance and good example.

(ii) It is unfortunately true that in many films scenes are portrayed, and philosophies of life are presented, which may easily be the occasion of serious sin, especially for the adolescent and immature. Yet we think that our correspondent somewhat exaggerates the difficulty of the position. We believe that it is possible to obtain a very considerable number of films which may fitly be shown in parochial halls. We would respectfully suggest to our correspondent that he read the encyclical *Vigilanti Cura*[1]—on the use and misuse of films—issued by Pope Pius XI on 29 June, 1936. This encyclical was addressed primarily to the Archbishops and Bishops of the United States whom it complimented on the establishment, some years before, of the Legion of Decency. But, needless to say, the encyclical also contains much helpful direction for the Catholics of the whole world. It is pointed out that pastors of souls must exercise vigilance over films wherever they may be produced and offered to Christian peoples. The Holy Father recommended the establishment in each country of a permanent national reviewing office ' to promote good motion pictures, to classify the others and to bring this judgment to the knowledge of the priests and faithful.' This office would also ' look after the organization of existing motion-picture theatres belonging to parishes and to Catholic associations so that they may be guaranteed reviewed and approved films. Through the organization of these halls, which are often known to the cinema industry as good clients, it will be possible to advance a new claim, namely, that the industry produce motion pictures which conform entirely to our standards. Such films may then readily be shown not only in Catholic halls but also in others.' In this country, since we have not the national reviewing office

[1] English translation C.T.S., London.

contemplated by Pope Pius XI, the priest must decide in the light of his personal knowledge and the judgment of Catholic critics, what films he may safely show in his parochial hall, or rather, perhaps, what films he should not show.

THE 'ENDS' OF MARRIAGE

We would direct our readers' attention to a Decree of the Holy Office of December, 1944. The Decree deals with the teaching of some modern writers regarding the 'ends' of marriage. In the Decree reference is made to the fact that these modem writers have either denied that the procreation and education of children are the primary purpose of marriage, or have asserted that the secondary ends are not subordinate to, but are independent of, that primary end. Thus this new teaching runs along two lines, which, though distinguishable, are closely related. These modern writers are not in agreement as to what is, in their view, the primary purpose of marriage. Some of them speak of this purpose as being the personal perfection and completion of the spouses by full community of life and activity. Others describe the primary purpose as the mutual conjugal love and union which is nourished and developed by the acts of intercourse. In these theories, as is noted in the Decree of the Holy Office, a meaning which is foreign to the accepted theological usage is given to terms like *finis, primarius, secundarius*—terms which occur in the official ecclesiastical documents.

These new theories, combined with the novel usage of terminology, are calculated to give rise to error and uncertainty—to prevent which the Decree has been published. The Fathers of the Congregation of the Holy Office at a plenary session held on 29 March, 1944, considered the following question which covers both aspects of the modern teaching—

An admitti possit quorumdam recentiorum sententia, qui vel negant finem primarium matrimonii esse prolis generationem et educationem, vel docent fines secundarios fini primario non esse essentialiter subordinatos sed esse aeque principales et independentes?

The reply which, with the rest of the Decree, was approved by the Holy Father, was 'Negative.' It is clear from this that no departure from the commonly accepted teaching and the received terminological usage is admissible. The accepted teaching and terminology are given briefly in the Code of Canon Law.[1] The procreation and education of children are the

[1] Canon 1013, § 1.

primary purpose of marriage. Subordinate to that primary purpose are the secondary ends of mutual help and love and the allaying of concupiscence.

THE USE OF THE SAFE PERIOD

During the past few years we have been asked on a number of occasions to discuss in these pages the question of the use of the 'safe period.' We refrained from doing so because no specific point was submitted for our consideration and it was not possible, in the space available, to deal with the question in any comprehensive way. Recently our hands were somewhat forced by having given to us for review a reprint of the sixth revised edition of *The Rhythm,* by Dr. Latz.[1] We shall make this the occasion of summarizing some of the more important aspects of the 'safe period' theory and practice—particularly, of course, those aspects which impinge upon the moral sphere. Thus we may, to some extent, satisfy those whose requests for a discussion we have hitherto felt constrained to refuse. As we have hinted, we do not propose really to review Dr. Latz's work. There would be little enough point in reviewing this work which reached its sixth edition some years ago, which has been reprinted seventeen times in the last decade or so, and of which nearly 300,000 copies have been sold. There are many other well-known works which deal with the same subject, so that it is clear that knowledge of the '*safe* period' has become widely diffused in some countries. We shall have a word to say, later, on further diffusion of this knowledge.

We have no competence to assess the physiological and medical aspects of the 'safe period' theory. But it is not necessary' to say very much about them here. Dr. Latz discusses them at length; he also discusses the ethical aspects, as do many other authors. It seems to be clearly established on the evidence of medical experts that there is in every woman's menstrual cycle a sterile period—that is, a number of days during which intercourse will not result in conception. Briefly, the reason is that during these days there is no ripe ovum present in the female genital tract, and conception takes place only when such an ovum is available for fecundation by the spermatozoon. By a strange inversion of thought, an inversion which is an eloquent commentary on the modern attitude to

[1] *The Rhythm of Sterility and Fertility in Women.* By Dr. Leo J. Latz.

the begetting of children, the sterile period is called 'safe'! We may remark, however, that investigations to discover the 'safe period' have also served to indicate the time of optimum fertility within the menstrual cycle—information which may be of no little help and value in some marriages. The 'safe period' bears a time relation to the process of ovulation. But there is some difficulty in determining when exactly ovulation takes place, and consequently in estimating when the 'safe period' begins, and how long it lasts. Ovulation is an internal function, and the time of its occurrence can principally be deduced from the subsequent onset of menstruation.

There has been, in the past thirty years, much medical investigation into, and discussion of, the interval between ovulation and menstruation and kindred points. The names of Ogino, Knaus, Sutherland and Latz (the author of *The Rhythm)* will be familiar to our readers. They will also perhaps have heard of Guchteneere, Holt and Smulders—to mention only a few of the expert investigators. There is substantial agreement in the findings of these experts, most of whom worked independently. They claim to have discovered the interval which elapses between ovulation and menstruation so that, given any normal menstrual cycle, they can estimate the time of ovulation and the periods of fertility and sterility in that particular cycle. Many of the authors append to their works elaborate charts and calendars in which they set out the common types of menstrual cycles and mark in them the fertile and sterile periods. The more recent investigations[1] continue to bear out the earlier findings of Ogino and Knaus who were the pioneers in this work. It must be noted, at the same time, that there are medical experts who maintain that ovulation is a variable function within the menstrual cycle; that it does not necessarily take place at a fixed time before menstruation, and that, consequently, estimates based upon the supposition of an invariable period must be rejected as unreliable. And even the most ardent supporters of the 'safe period' theory' generally admit that there are difficulties and uncertainties in its practical application. They insist that, for successful application, a long term of observation of the menstrual cycle in each particular case is necessary, as also is medical advice. The 'safe period' technique is based upon a scientific calculation which needs careful and scientific application in the individual case. It is further admitted that there are exceptional circumstances and

[1] Holt, *Marriage and Periodic Abstinence,* Part Hi; *American Journal of Obstetrics and Gynaecology*—March, 1944.

types of cases in which the sterile period cannot be ascertained.[1] So much for the medical side of this question.

From the moral point of view the most fundamental problem is whether it is lawful to act on the 'safe period' *as a system* of marital relations—that is, to confine the use of marriage to the sterile days and thus avoid offspring. There is no doubt, of course, that there is nothing unlawful in using marriage during the 'safe period.' And it is the common view of theologians that even the limitation of intercourse to the sterile period is in the abstract, good or at least indifferent.[2] Many reasons are advanced for this view. We shall first mention the authoritative statements generally cited. In the encyclical *Casti Connubii* we read:[3] "Nor are they considered as acting against nature who in the married state use their right in the proper manner, although on account of natural reasons *either of time* or of certain defects new life cannot be brought forth. For in matrimony as well as in the use of matrimonial rights there are also secondary ends such as mutual aid, cultivating of mutual love and the quieting of concupiscence. . . ." A reply of the Penitentiary given in 1880 is also invoked. This reply refers to the restriction of the use of marriage to the sterile period as calculated by Capellmann. His system of calculating the 'safe period' is no longer accepted, but the moral issue remains the same now as then, and the principle enunciated in the reply is equally valid in regard to the exclusive use of the sterile period as it is estimated to-day. The reply runs:[4]

> Coniuges praedicto modo matrimonio utentes inquietandos non esse, posseque confcssarium sententiam de qua agitur illis coniugibus, caute tamen, insinuare, quos alia ratione a detestabili onanismi crimine abducere frustra tentaverit.

However, an American theologian, Dr. Griesc,[5] has maintained the thesis that 'the practice of periodic abstinence according to "safe period method" is *per se illicitum, per accidens autem licitum.*' This thesis is theoretically the inverse of the commonly accepted view. We would not accept the thesis. We do not know what precisely the author means by *per se illicitum.* We do not see how, or in what, there is any deordination *in the act of intercourse itself,* that is, in the object of the act—even

[1] Holt, op. cit., ch. iv.
[2] Cf. Merkelbach, *Quaestiones de Castitate et Luxuria,* p. 118.
[3] p. 28 (C.T.S. translation). Italics ours.
[4] *Analecta Juris Pont.,* vol. xxii, p. 249.
[5] *The 'Rhythm' in Marriage and Christian Morality,* The Newman Bookshop (1944).

though it is performed only during the sterile period. The absence of such deordination in the act itself (which surely is the normal meaning of *per se)* is the fundamental argument for the common view. Any deordination that is present in the concrete—and we grant that there may be, easily and often, a deordination—arises *per accidens,* comes from some factor extrinsic to the act itself, like the motive or the circumstances. It is quite true that in the concrete case, the restriction of the use of marriage to the sterile period—like total abstention from its use—will be good or bad according to the motive that inspires it, according as there is, or is not, in the circumstances a sufficiently justifying cause.[1] So that in practice Dr. Griese's thesis would lead to the same general conclusions as the common view. The exclusive use of the ' safe period ' for a time, without a justifying cause may often be only venially sinful. But such use can be gravely sinful, for instance, if there is not mutual consent to the restriction, or if there is serious danger of incontinence for the parties during the periods of abstinence.

If, then, a confessor or director is asked about the liceity of the exclusive use of the ' safe period,' he will have to elicit whether or not there is a justifying cause, and give his verdict accordingly. There are many reasons relating to health, housing, poverty which may justify, for a time or even permanently, the restriction of marital intercourse to the sterile period. We cannot further elaborate these causes now.[2]

Should knowledge of the ' safe period ' be generally diffused ? There are many, among them theologians,[3] who think it should. They claim that such a course is, to put it at its worst, the lesser of two evils.[4] The alternatives are stated to be the use of the ' safe period ' or of contraceptives. This general statement is too facile a simplification of the problem. Beyond doubt there is danger in the indiscriminate broadcasting of this knowledge ;[5] danger that the married may, without any justifying cause, restrict their use of marriage to the sterile period, with consequent loss to the population ; danger that the unmarried may be led

[1] Cf. Merkelbach, loc. cit., ' Talis enim agendi ratio non est peccaminosa cum coniugcs possint se continere quamdiu volunt, et aliunde nil contra matrimonii finem agant tempore quo congrediuntur dummodo ita fiat ex recta intentione seu iusto motivo.'

[2] Cf. Encyclical *Casti Connubii,* p. 31, p. 62 ;

[3] Cf. Dr. O'Brien, *Homiletic and Postered Review,* May, 1933. This writer regards as unacceptable and vitiated a service based on ignorance. But is knowledge in certain spheres so vital ? Knowledge was withheld from our first parents.

[4] Cf. Latz., op. cit., pp. 144, 145 ; Sutherland, *Control of Life,* p. 227.

[5] Cf. Salsmans, *Eph. Th. Mor.,* July, 1934, p. 568.

to commit sins of adultery or fornication in the knowledge that the consequences can naturally be avoided at certain times. The problem is a social one. Indiscriminate diffusion of knowledge of the 'safe period' could easily enough lead to its indiscriminate use—a situation fraught with calamitous social consequences. Accordingly, we would deprecate the suggestion that this knowledge should be generally disseminated. But how is the situation to be met? How is the knowledge to be kept within proper limits? *We have* referred earlier to the widespread sale of books on the subject. And a well-known American authority has written:[1] 'As regards publication of knowledge concerning the sterile period, so much has been done in that direction already that it is idle to discuss ways and means of keeping publicity at a minimum.' Though we wonder if this social problem can adequately be met by appealing to the individual conscience, we would not approve of a defeatist gesture in these countries. We suggest that information on the 'safe period' technique should only be given individually as far as is possible, and only to those who are entitled to use it. And they in turn should be exhorted not to pass on the information to others.

The use of the 'safe period' may be prudently suggested by the confessor to those married people whom he knows to be justified, for one reason or another, in thus restricting their marital relations. The confessor should act with great prudence and judgment.[2] It is possible that his judicious suggestion will be a means of winning some from contraceptive practices.[3] It was for this specific purpose that the reply of 1880 allowed that the confessor could cautiously suggest the restriction of the use of marriage to the sterile days. Commenting on the reply Vermeersch writes:[4] 'This practice might be insinuated *caute,* that is, with prudent discretion. With prudent discretion, we say; the uncertainty of the result is enough to suggest prudence; besides the confessor should not be a counsellor of infecundity. The insinuation of this course of action may be appropriate as a means of preventing formal sins, or as offering a way out of a critical situation where the danger of incontinence makes intercourse imperative, and yet where conception would

[1] John A. Ryan in *American Ecclesiastical Review,* July, 1933, p. 37.

[2] This implies that no exaggerated claims are made for the success of the method. Merkelbach, loc. cit., recalls with emphasis the advice of the bishops of Belgium: 'Ne autem ipsis coniugibus proponatur tempus ageneseos ac si per illud generatio certe vitaretur.'

[3] Cf. Lehmkuhl, TA- *Mor.,* ii, n. 851.

[4] *What is Marriage,* p. 45 (Bouscaren's translation).

be perilous for the mother. It goes without saying that this practice normally supposes the agreement of both parties.' Those to whom the use of the 'safe period' has been suggested by the confessor, or for whom it is clearly lawful, may and should be given the necessary detailed information.

By whom should it be given? By the confessor? Most certainly not. It is altogether repugnant to the function of the confessor that he should attempt to explain the details of the 'safe period' to his penitents. In a document issued by the Holy Office we read:

> Id vero apprime atque probe meminerit (confessarius) sibi haud corporum sed animarum curationem concreditam esse. Eius, igitur, per se non est consilia poenitentibus dare quae ad *medicinam vel hygienem spectant,* atque omnino devitet quae mirationem moverent vel scandalum gignerent. Si quae, vero, consilia huiusmodi necessaria, etiam propter conscientiam, censeantur, eadem a perito recto, prudenti atqui morali doctrina instructo tradenda erunt, ad quem igitur poenitens remittendus est.
>
> Itidem ne audeat confessarius, seu sponte seu rogatus, de natura vel modo actus quo vita transmittitur poenitentes docere, atque ad id nullo unquam praetextu adducatur.

Even apart from these authoritative provisions, it would be manifestly imprudent for a confessor, or for a priest outside confession, to attempt to explain the intricacies of the 'safe period'—though its use may be lawful or desirable in a particular case. We have referred earlier to the admitted difficulties and uncertainties, and to the necessity for the parties to have medical advice. So the priest should recommend those concerned to consult a Catholic doctor. It is mentioned, by way of difficulty against this recommendation, that the general medical practitioner, to whom the majority will go for advice, may not have made any detailed study of the 'safe period' technique, or may hold no brief for it. Perhaps this difficulty could be to some extent overcome if the priest discussed the general question with the doctor.

Since our remarks here have been occasioned by our receiving *The Rhythm* for review, it will be appropriate to ask, as a final question, whether a priest might recommend such books to those who are known to be justified in restricting their use of marriage to the sterile period? We have in mind, of course, only books which contain no doctrine contrary to Catholic morals. This is true of Latz's work which is issued with ecclesiastical approbation. As a general rule, one should be very slow to recommend these works to penitents or clients.

[1] *Normae quaedam de agendi ratione Confessoriorum circa vi. Decalogi Praeceptum,* 16 May, 1943.

But if a priest is convinced that certain married parties who consult him are entitled to use the 'safe period,' and *if it* is not reasonably possible for them to get the necessary information from a Catholic doctor, then we think that one of the acceptable books on the subject may be suggested as likely to be helpful. Those to whom this suggestion is made should be exhorted to keep any such book under close custody so that it will not fall into the hands of other readers. It will be well also to enter the *caveat* that books on the subject may be too optimistic regarding the success of the 'safe period' technique. Needless to say, a priest should not take any responsibility for the 'safety' of the system contained in the book he may suggest.

ADDRESS OF THE HOLY FATHER ON MORAL PROBLEMS IN MARRIED LIFE[1]

On 29 October, 1951, those taking part in the Congress of the Italian Union of Catholic Midwives were received in audience by Pope Pius XII. The general theme of the long and important address delivered by His Holiness on that occasion was the Apostolate of the Midwife. And since the duties of the midwife are so intimately related to, and bound up with, the institution of marriage and its primary purpose, the procreation, birth and education of children, the Pope took the opportunity of stating the Catholic teaching on a number of vital moral problems which may arise in the sphere of married life. This papal address was widely reported in the secular press. In some instances it was grossly mistranslated and garbled. In England it gave rise, in non-Catholic circles, to considerable controversy—most of which was ill-informed.[2] For it must be said, at the very outset, that the Pope did not express any new or advanced views, but merely indicated the accepted Catholic teaching on the following points in particular: the inviolable right to life of the innocent human person—and the unborn child is an innocent human person; the consequent moral unlawfulness of embryotomy, direct abortion and euthanasia; the immorality of birth prevention and of direct sterilization; the use of the 'safe period' in marriage relations; the primary and secondary purposes

[1] *L'Osservatore Romano,* 29-30 Ottobre, 1951, pp. 3–4. The address was given in Italian.

[2] Cf. art. 'Dignità dell' Uomo, in *L Ossenatore Romano,* 2-3 Novembre, 1951.

of marriage ; artificial insemination ; human dignity and restraint in the exercise of the generative function. It is, perhaps, somehow understandable, though deeply lamentable, that in a *milieu* where companionate marriage, abortion, craniotomy, artificial insemination, birth control and a completely hedonistic view of marital relations are accepted almost as a matter of course, and where sterilization and euthanasia are being hankered after, the forthright proclamation of Catholic principles—which, in this context, are the very principles of the natural law itself—should cause some surprise and even consternation. It is an illuminating comment on the way in which peoples, and among them intellectuals and even leaders of Churches which claim to be Christian, once the divinely appointed authority on faith and morals has been rejected, can fall into the grossest errors, not merely in regard to the teaching of Revelation, but in regard to the fundamental tenets of the natural law. In view of the widespread publicity given to this papal address, the garbled fashion in which it was, in some cases, presented, and the controversial discussion which arose around it, we think it well to present here, with a modicum of comment, the salient points as set out by the Holy Father. As has been indicated earlier, a formidable list of questions was dealt with—but they are all knit together, and find unity, in an address of rare clarity and beauty.

In the opening section of his address the Holy Father spoke of the dignity of the obstetric profession, which has for its purpose to watch over and to guard the wondrous process of maternity and childbirth—in which God, nature and the parents collaborate. These processes are governed by God's eternal law, and all human agents who co-operate therein must voluntarily subject themselves, under the guidance of divinely appointed authority, to the dictates of this law. The apostolate of the midwife is to use professional knowledge and experience to ensure the due fulfilment of God's plan in regard to human procreation, and to strive to lead those who come under her influence to a proper appreciation of this divine plan. The Holy Father then discussed, under four heads, the manner of the exercise of this apostolate.

The apostolate of the midwife should firstly be exercised through her personal influence. A deep knowledge of the technique of her professional work, a high moral standard and sense of responsibility are expected from the Catholic midwife. These qualities will enhance her personal and religious stature, will redound to the credit of her Faith, and will enable

her to wield, in the course *of her* intimate association with mother and child, an effective Christian influence.

The second element of the apostolate of the midwife consists in her zeal in upholding the value and inviolability of human life. This zeal can be shown in words, opportunely spoken, and even more potently by the example of conscientious conduct. The Holy Father then stated the fundamental principle of the natural law that every innocent human being—and the infant in the womb is an innocent human being—has, immediately from God, a sacred and inviolable right to life. No human authority, whether public or private, may, for any reason or in any circumstances, directly take that life—however defective it may be. To save the life of the mother by every lawful means is, of course, a most noble object. But to do so by directly killing the child is unlawful. Both mother and child, as innocent human beings, have an equal and independent right to life. Just as it would never be lawful directly to kill the mother to save the child, equally it is never lawful directly to kill the child to save the mother. In fact, gynaecologists assure us that, with modern techniques of Caesarean operations, the problem of having to consider sacrificing the life of the child to save the mother, in cases of difficult childbirth, is dated. Hence the furore in some of the English papers was largely concerned with a non-existent problem. But, in any case, the principle stated regarding the child's right to life would remain intact. An end, however good, cannot justify unlawful means. On this principle all forms of direct abortion, embryotomy and euthanasia stand condemned.[1] The midwife should try to lead others to a knowledge of, and respect for, the sacredness of human life and to win parents to accept, with gratitude and love, the birth of children, who are a blessing and a sacred trust. Especially it will be the duty of the midwife to encourage the mother, particularly the young mother, in her noble and salutary task of nourishing the new life within her and of giving it birth and post-natal care. According to God's design, as revealed in nature and in Scripture, children are a blessing not a burden. There can, indeed, be circumstances in which parents may, without sin, refrain from having children, but

[1] At this point the Holy Father referred to a reply given by the Holy Office on 2 December, 1940, which condemned, as opposed to the natural law, the direct killing, on public authority, of innocent persons who, being physically or psychically diseased, were a useless burden on the nation. Cf. *A.A.S.* xxxii (1940), p. 553 ; Bouscaren, *Canon Law Digest,* ii, pp. 96-7.

such cases furnish no argument against the honour and dignity of maternity. Having spoken of the value, on the natural plane, of human life, the Holy Father referred to the grave duty of the midwife to ensure that infants in danger of death receive baptism—the conferring of which, in cases of urgency, will frequently devolve upon her personally. By discharging this duty faithfully she can secure the glorious achievement of the eternal salvation of many infants.

A third aspect of the apostolate of the midwife may be described as the assisting of the mother to discharge, with readiness and generosity, the function of motherhood. An attitude of willing acceptance of motherhood is a natural corollary of the use of the conjugal rights, and is also a necessary pre-condition for the due respect and care for the newly formed life. The midwife should foster this attitude in the minds of parents. She should also give any help that is possible and lawful to remove obstacles and to ease the processes of procreation and parturition. But she must clearly understand the basic law, stated in *Casti Connubii,* that [*] every attempt on the part of the married couple during the conjugal act or during the development of its natural consequences to deprive it of its inherent power and to hinder the procreation of new life, is immoral, and no "indication" or necessity can change an action which is intrinsically unlawful into an action that is moral and lawful.'[†] The midwife must refuse categorically to accede to any request from parents to help them to violate this unchangeable principle of the moral law. Pope Pius XII then recalled the teaching of the Church as expressed in a reply of the Holy Office in 1940[‡] that the direct sterilization of man or woman, whether perpetual or temporary, is a violation of the law of nature—from which even the Church cannot dispense.

At this point the Pope raised the question of the use, for conjugal intercourse, of the 'safe period.' This part of the address has suffered most in the public press. Hence we shall set out in some detail the points made. Midwives are expected to be scientifically informed on the medical aspects of the 'safe period.' It will be their duty, and not that of the priest, to give information, without indulging in propaganda however, on the technical points of the theory when this information is duly sought by married persons. The moral implications of the use of the 'safe period' should be clearly understood.

[*] *A.A.S.,* xxü (1930), p. 559.
[†] *A.A.S.,* xxxii (1940), p. 73. Bouscarcn, op. cit., ii, p. 96.

The Church is the competent judge of the moral issues. Married persons may use their conjugal rights during the 'safe period.' There is nothing wrong in this.[1] The act is properly performed and nothing is done to prevent its natural consequences. Thus, intercourse during the 'safe period' is radically different from any form of birth prevention which involves a perversion of the natural act or of its consequences. The further question arises: may married couples lawfully restrict their conjugal relations exclusively to the 'safe period'? This question does not admit of a simple affirmative or negative answer. Firstly, it must be pointed out that if, in contracting marriage, one or both of the spouses transfer marital rights *only* for the sterile periods—so that no such rights are transferred for the other periods—the marriage is invalid. For valid marriage there must be an act of will mutually transferring *perpetual* and exclusive rights. If the perpetual rights are transferred, the validity of the marriage is not jeopardized under this head, even though the spouses intend to *use* their perpetual marital rights only during the sterile period. But the question remains whether the restriction of the use of the marital rights exclusively to the 'safe period' is normally justifiable. The answer will depend upon the reasons for this restriction: in some cases the restriction will be lawful, in other cases it will not. Entry into the married state gives the spouses the right to perform acts of conjugal intercourse—which are the prerogative of this state alone—and, in normal circumstances, the exercise of this right demands the fulfilment of the positive duty appropriate to the primary purpose of marriage, namely, the due procreation and education of children. Hence, in the normal case, those who enter marriage and use its rights, yet deliberately and completely confine this use to the infertile period—even though the act is properly performed and the parents are prepared to accept and care for any child begotten—run counter to the primary purpose of marriage and to the designs of God for the propagation of the human race. The attitude of such married persons is based upon a false philosophy of life. They indulge in the sensual privileges and pleasures of the married state but, of set purpose and without a justifying cause, they avoid the positive fulfilment of the duties of that state. Serious reasons will excuse either temporarily, or even permanently, from the positive fulfilment of the primary purpose of marriage and, therefore, these reasons will justify,

[1] This teaching is clearly stated in the encyclical *Casti Connubii,* English translation, C.T.S., London, n. 59.

for a time, or perhaps even for the whole course of marital life, the restriction of conjugal relations exclusively to the sterile period. These reasons may be based on medical, eugenic, economic or social considerations. They must be considered sufficiently serious, after a just and rational judgment, morally to justify the exclusive use of the 'safe period.' The Holy Father then considered the case in which motherhood has, for some good reason, to be entirely avoided. The exclusive use of the 'safe period' would, of course, be lawful in such a case. But this might not be possible, or might not be sufficiently secure when the medical indications certainly demand that motherhood be absolutely excluded. In this case, if the wife is unwilling to accept the risk of maternity, the only solution which remains is that of total abstinence from the complete exercise of the natural faculty. The Catholic midwife must be clear, and must not leave any doubt in the minds of those who consult her, that no circumstances, however extreme, will justify the perversion of the natural act or any direct interference with the life and development of the embryo. The Holy Father here rejects the false sentimentality which is introduced to palliate such perversion and interference. Complete abstinence is not impossible. That it is not follows from the fact that God has commanded it in certain circumstances, such as when the conjugal union cannot be achieved according to the laws of nature. Moreover, it is false to suggest that men and women of to-day are incapable, under the grace of God, of heroic conduct.

The fourth and final aspect of the apostolate of the midwife has reference to the defence, through a proper understanding and diffusion of knowledge, of the true order of values in relation to the dignity of the human person. In recent years there has been a grave misplacing of emphasis on the personalist value to the parties of the institution of marriage and of the act of conjugal intercourse. There has, indeed, been an inversion of the order of values in this context. The primary end of marriage, as instituted by God, is the procreation and education of offspring. This is the clear statement of Canon Law. All other ends of marriage are secondary and subordinate. In 1944 the Holy Office issued a decree[1] rejecting the views of some modern writers who suggested that the procreation and education of children was not the primary end of marriage, or who held that the secondary ends, listed in

[1] *A.A.S.*, xxxvi (1944), p. 103.

canon 1013, § 1, were not essentially subordinate to that primary end but were equally principal and independent. It is true that marriage has personal ends and values which are of great, yet only secondary, importance. The married spouses are human persons, not irrational animals. New human life is procreated by parental co-operation in the most intimate union of two persons—a personal bodily union which symbolizes a union of mind and heart. This personal union is orientated by nature towards procreation, and the orientation remains in every properly performed conjugal act, even when this act is sterile.

This consideration of the nature and the ends of marriage and of the conjugal act led the Holy Father to speak again of artificial insemination which he had discussed some years earlier in an address given to the International Congress of Catholic Doctors.[1] The conjugal act is a personal thing; it is not merely an organic function. Human life, according to the designs of God, is to be procreated by acts of personal co-operation in the intimate bodily union of the husband and wife. These acts constitute the object, of the right which is transferred in the marriage contract. Though it is possible by artificial means—that is apart from the natural conjugal act—to bring together the male and female elements and thus achieve procreation, this artificial procedure is not in accordance with the designs of God, and does not fall within the object of the right transferred in marriage. If parties are antecedently and perpetually incapable of the natural mutual conjugal act they are impotent, and are debarred from marriage by a diriment impediment of the natural law. It may be that such persons can, by artificial means, procreate children, but this form of procreation is not that intended and blessed by God. He has willed that the human race be propagated only by means of the natural conjugal act performed within the married state. The procreative function, important though it is, can never be dissociated from that act and that state.

In the concluding paragraphs of his address the Holy Father issued a sublime warning in defence of human dignity in the use of the generative functions. The conjugal act is lawful when performed within marriage, and in due accordance with the ends of marriage. The husband and wife have the right to seek, and to enjoy, the pleasure and happiness with which the Creator has invested the exercise of the procreative functions.

[1] 29 September, 1949.

But this pleasure should be indulged in with the restraint and moderation which befit human persons acting rationally, with dignity and mutual respect, and not as agents dominated by a blind service of passion and sensuality. The pleasure should never be allowed to become an end in itself as it is proclaimed to be in the hedonistic teaching so common to-day. The conjugal act and the pleasure associated therewith serve, and are essentially subordinated to, the primary purpose of marriage. This teaching which Catholic midwives are urged to foster and disseminate is neither Manicheism nor Jansenism, but derives from the dignity of the divine institution of marriage, and of the human persons who are the parties thereto.

LICEITAS LOTIONUM VAGINALIUM POST COPULAM

I would be very much obliged if you would answer the following question :

Uxor, post copulam carnalem, adhibet lotiones vaginales ad praecavendum periculum contagionis. Praesupposito ejus intentionem esse rectam, quaeritur num licite agat uxor ?

Zosimus.

Omnes theologi consentiunt lotiones intra-vaginales quae fiunt *immediate* post copulam illicitas esse.[1] Nam in his circumstantiis semen receptum aut enecatur per irrigationem (praesertim si adhibetur liquidum ad enecandum semen aptum) aut ejicitur. Et ideo tales lotiones directe fecundationi obsunt. Breviter, sunt media objective onanistica, et bona uxoris intentio non potest justificare talia media. In omni casu, usus mediorum etiam ineptorum e mala intentione praecavendi conceptionem est peccatum onanismi subjective.[2]

Si quaeritur quantum temporis intervallum post copulam requiratur ut lotiones *vaginales* sint licitae—non una est responsio theologorum. Plurimi[3] tenent requiri aliquot (saltem tres) horas antequam lotiones licite perfici possint. Pauci[4] putant lotiones vaginales licitas esse elapsa una hora post congressum maritalem. Vermeersch, exempli gratia, docet

[1] Cf. Noldin, *De Sexto Praecepto,* n. 69.
[2] Cf. Merkelbach, *De Castitate,* p. 120 ; Jorio, *Th. Mor.,* iii, n. 1330 ; Genicot, *Th. Moralis,* ii, n. 549.
[3] Cf. Noldin, Merkelbach, loc. cit.
[4] Cf. Jorio, loc. cit.
• *Th. Mor.* iv, n. 79.

Jotio vaginalis post horam a copula, in sc illicita dici nequit dum iam tunc generationem moralitcr non impedit.

Sed hacc sententia, propter plures rationes, merito, ut nobis videtur, rejicitur a Merkelbach.[1] Notatu dignum est Vermeersch olim, in prima editione sui operis de castitate, intervallum sex horarum exegisse.[2]

Non possumus pro certo concludere e verbis [3] Zosimi [4] num, in casu proposito, revera adsit periculum contagionis; nec liquet de quali contagione sit quaestio. Davis, in simili contextu, optime notat :[5]

Satis absurde dicitur uxorem posse licite lotionem adhibere ad enecandum germen syphiliticum quod simul cum viri semine, utique syphilitici, vaginam intrat, nam medicamentum quod germen syphiliticum enecat semen etiam enecat, et semen prius enecatur quoniam est germinis syphilitici vehiculum.

Etiamsi, igitur, revera adest periculum contagionis gravis morbi illicitum manet adhibere lotiones quae directe destruunt semen et ideo impediunt fccundationem. Lotiones vaginales quae *immediate* post copulam fiunt illos effectus habent, uti iam diximus. Sed elapsis aliquot, saltem forsan tribus, horis post coitum, etsi forte pars parva seminis enecaretur vel ejiceretur, licitum esset uti lotionibus vaginalibus, sanitatis causa vere necessariis.

Si autem lotiones fiunt praetextu munditiei vel aliae similis levis rationis, diutius differendae sunt si adhuc adsit periculum enecationis vel ejectionis partis seminis. Primo notandum est nos hic loqui de lotionibus intra vaginam et post copulam peractis; et secundo, ut patet, intervallum multo longius requiri antequam lotiones *uteri* licite fieri possint.[6]

Plures uxores videntur putare lotiones vaginales semper post copulam necessarias esse aut saltem sanitati semper prodesse. Huic sententiae plane contradicunt periti qui declarant lotiones frequenter potius esse sanitati nocivas.[8] Payen dicit :[7]

Aussi bien, à l'heure actuelle, il y a tendance à considérer comme bienfaisantes des injections qui, en réalité, sont non seulement inutiles mais nuisibles. C'est le sentiment de nombreux médecins. Ainsi le Dr. Schockaert distingue nettement les injections vaginales pratiquées dans un but médical

[1] Loc. cit., n. 1.
[2] *De Castitate,* n. 264.
[3] *Moral and Pastoral Theology,* iv, p. 252.
[4] Accurata determinatio intervalli post quod lotiones fieri possunt sine periculo enecationis vel ejectionis seminis potius pertinet ad medicos.
[5] Cf. Genicot, loc. cit., dicit ' Ut hujusmodi lotiones, etiam cum mera aqua, fiant sine periculo expellendi seminis plures medici requirunt duodecim horas post ultimam copulam; quod tempus omnino exigendum ante quam fiant lotiones *uteri*; lotiones autem *vaginae* post duas tresve horas fieri possunt sine culpa, utpote sine periculo expellendi omnis seminis.'
[6] Merkelbach, loc. cit., dicit : ' Gencratim lotio potius est sanitati nociva.'
[7] *Déontologie Médicale,* p. 210.

par une femme *malade,* et les mêmes injections pratiquées par une femme *saine,* comme moyen de propreté . . . ' Quant aux soi disant injections de propreté chez la femme normale, elles sont parfaitement inutiles et même fnuisibles.

Dr. Jayle scripsit :

Certaines pratiques brutales et très répandues, sont dangereuses pour l'appareil génital, et limitent parfois la puissance de la procréation. Je veux parler des injections vaginales, pratiquées même en dehors de toute intention anticonceptionelle. Les glandes du col et du vagin secrétent des produits bactéricides qui préservent de toute affection banale non pathologique. Ces glandes s'altèrent sous l'influence des injections répétées et perdent de leur pouvoir, si bien que la meilleure manière de détériorer l'apparéil génital féminin consiste à prendre des injections continues. Toute femme saine doit tenir l'injection vaginale pour le contraire d'une pratique de propreté.[1]

DE REDDENDO DEBITO CONJUGALI QUANDO ADEST PERICULUM SCANDALI

Quid consulendum est mulieri quae quaerit utrum liceat debitum reddere viro petenti in cubiculo vel lectulo ubi, ob paupertatem, coguntur etiam liberi, pueri et puellae, dormire ?

Perplexus.

Parentes sub gravi tenentur copulam conjugalem exercere in loco secreto ne aliis causent periculum scandali.[2] Peculiari omnino obligatione tenentur parentes praecavere ne scandalum dent suis pusillis liberis. Recolenda sunt verba Christi :[3]

Qui scandalizaverit unum de pusillis istis . . . expedit ei ut suspendatur mola asinaria in collo ejus et demergatur in profundum maris. Vae mundo a scandalis . . ., vae homini illi per quem scandalum venit. Si autem manus tua vel pes tuus scandalizat te, abscide eum et projice abs te. . . .

Mulier igitur obligatur recusare debitum si revera adsit periculum proximum scandali liberorum—quod aliquatenus pendet ex eorum aetate. Mulier debet monere virum de hoc periculo deque sua gravissima obligatione praecavendi scandalum praesertim pusillorum. Si ullo modo fieri potest, parentes ne sinant liberos, rationis compotes, in eodem cubiculo vel saltem in eodem lectulo secum decumbere. Dolendum quidem est, in domibus pauperum ob miserrimam angustiam loci, hoc nonnumquam evitari non posse. His in casibus detur consilium quod ' praestat grandiores filios filiasque humi extra parentum lectum dormire.'[4]

[1] *L'Eglise et l'Eugenisme,* p. 132.
[2] Cf. Noldin, *De Sexto Praecepto,* n. 80.
[3] Matt., xviii, 6-8.
[4] Davis, *Moral and Pastoral Th.,* iv., p. 254 ; cf. Merkelbach, *Quaestiones de Castitate et Luxuria,* p. 107.

THE MORALITY OF ARTIFICIAL FECUNDATION

Recently the practice of human artificial fecundation has received a certain amount of publicity in the newspapers. It was reported that in the U.S.A, thousands of so-called A1, or test tube babies have been happily bom ; and it seems that the practice is likely to become widespread before long. So the priest and the doctor are faced with another medico-moral problem, the morality of which, as in the case of birth-control, sterilization, etc., must be clearly stated.

The morality of certain forms or methods of artificial fecundation is not in doubt. Some are lawful, others unlawful. There are lawful methods, loosely called artificial, which simply consist in aiding and perfecting nature in the marital act performed in the ordinary way. There is an immoral method, artificial in the strict sense, in which the semen is obtained by masturbation or onanism, and then introduced, *ope instrumenti,* into the vagina or uterus. And, of course, the special form or practice of artificial fecundation now being advocated in certain quarters, in which the wife of a sterile husband is artificially fecundated with the semen of another and unknown man, is not only immoral, but the very negation of marriage itself, offensive to human dignity and subversive of family and social life. This practice should be called by its appropriate name, viz. human stud breeding.

The particular form or method of artificial fecundation which is open to doubt and discussion, and which concerns us here, is that which might take place between husband and wife when intercourse in the ordinary way is impossible. The semen is extracted directly from the testicles and then injected into the vagina or uterus. A practical case would be where the wife is capable of conception, but the husband, owing to some accident, operation, etc., after marriage, is unable to have intercourse.

I am aware that a number of well-known theologians hold that this method is lawful. We may admit that the opinion has *extrinsic* probability. More important, however, is its *intrinsic* probability. Is this opinion *safe* and *well-founded, 'vere, solide et certe probabilis,'* based on solid intrinsic arguments ? Is it sufficient to say with some authors that this method is lawful because it can be done without pollution or venereal pleasure ? I think a more fundamental reason is required in order to meet what seems to be the chief argument in support of the opposite view. This argument is stated by Merkelbach as follows :—

> ' In his omnibus (modis fecundationis artificialis) deest modus naturalis procurandi generationem per copulam, nec habetur actio de se tendens ad generationem ; sed abusus seminis humani cuius homo dominium non habet, sed solum usum, et quidem solummodo in ordine ad generationem naturali medio copulae coniugalis procurandam." *Th. Mor.* iii. n. 938. In other words, any method or means of fecundation and generation *extra copulam* is wrong.

I do not refer here to the Holy Office decision of March, 1897, as it is now generally agreed that this decision had in view only the method of fecundation in which the semen is obtained by masturbation.

Lector.

Our correspondent has given an excellent summary of the theological teaching in regard to artificial fecundation. He has also admirably narrowed down the scope of his query to one precise point. And it should be noted that this point is only raised concerning artificial fecundation as between husband and wife. It is presupposed, then, that there has been a valid marriage; that, accordingly, neither of the parties thereto suffered from antecedent and perpetual impotence. It is clearly unlawful, in every circumstance, to attempt to fecundate a woman with semen obtained from any extra-marital source, from any source other than her lawful husband. But, as our correspondent remarks, theological opinion is divided regarding the morality of that species of artificial fecundation in which the semen is extracted directly from the epididymis of the husband and is injected into the vagina or uterus of his wife. Some prominent theologians[1] hold for the liceity of this procedure and the opinion must be regarded as extrinsically probable. We are asked, however, about its intrinsic probability. We might, perhaps, reply in the words of Prümmer:[2]

Probabilitas extrinscca resolvitur in probabilitatem intrinsecam, cum graves auctores aliquam opinionem non reputarent probabilem nisi propter gravia motiva.

But it will be fairer to consider the question at some length, and in particular, to indicate and examine some of the arguments advanced by those who uphold the liceity of the procedure under discussion, as well as some of the reasons given by those who take the contrary view. For these latter constitute a formidable group, perhaps the majority, of well-known theologians.[3] The defenders of both opinions will, it is suggested, fairly generally admit that the reply of the Holy Office in 1897, which declared the unlawfulness of artificial fecundation,[4] did not cover the precise method of insemination with which we

1 Cf. Noldin, *De Sexto Praec.* n. 77; Vermeersch, *Th. Mor.*, iv, n. 58; Genicot, *Th. Mor.* ii, n. 545 (nota i); Payen, *De Mat.*, ii, n. 2114; Jorio, *Th. Mor.* iii, n. 1306.

2 *Th. Mor.*, i, n. 342.

3 Cf. Cappello, *De Sac.*, iii, n. 382; De Smet, *De Sponsalibus et Mat.*, n. 560, nota 2; Merkelbach, *Th. Mor.*, iii, n. 938.

4 No distinction was made in die question or in the reply. It was simply asked, 'An adhiberi possit artificialis foecundatio mulieris?' And the reply was: 'Non licere.'

are concerned here. If it did, there could be no room for divergent opinions.

The case for liceity was well and clearly stated in an article in the *American Ecclesiastical Review*.[1] As this is the best and fullest statement we have seen, we take the liberty of summarizing its principal points. The author of the article, Father Gerald Kelly, S.J., argues to his conclusion from an analysis of the rights of married people to propagate, rights which, in his view—and terminology—are direct as well as indirect. The matrimonial consent is a mutual exchange, between the parties, of bodily rights with reference to generative acts. This exchange gives rise to bilateral obligations regarding sexual intercourse. Correlative to these obligations each of the parties, as an individual, has the right to propagate—but the right, under this head, is only indirect. The right to propagate can, however, be considered under another aspect. The husband and wife are set up by marriage, in accordance with the designs of God, as a new generative unit in society. They are the natural founders of a human family, and as such they have a direct right to propagate by any means which is not in itself immoral. An individual in virtue of his natural right to life, failing normal means of self preservation, may avail himself of abnormal means. Similarly a husband and wife who are 'unable to generate by the normal means of sexual intercourse, may use abnormal means, provided the means be not sinful.'[2]

It is claimed that this analysis really forestalls the objection inherent in the argument of Merkelbach quoted by our correspondent. The objection is that fecundation and generation *extra copulam* are wrong; that the right of married people to propagate is limited to the normal means of sexual intercourse. Father Kelly replies that there is no cogent proof that the right to propagate is thus limited. Of course, he admits that the mutual rights and obligations of married people regarding generation of offspring only extend *directly* to acts of sexual intercourse. That is to say, neither of the parties to a marriage has the right to insist upon the use of artificial fecundation, or the obligation to submit to it.

Merkelbach urges more fundamentally against this artificial fecundation that the act of removing the semen from the epididymis is gravely unlawful.

> Actio qua expellitur (semen) aut e testiculis extrahitur, quantum est de se, ex natura sua et ex modo quo fit ita semen emittit ut generatio naturaliter

[1] August, 1939, vol. ci, pp. 109-118.
[2] Art. cit., p. 113.

impediatur, etsi, per accidens ex alia actione consequenti, huic defectui obvietur ut semen artificiali modo ad generationem conferat. Quod nihilominus est insufficiens ad rectitudinem in priori actione restituendam.

Thus he holds that the direct removal of the semen involves an abuse akin to that in pollution. Father Kelly's answer is a simple denial. In the direct extraction of the semen there is no abuse of the sexual processes because, in fact, there is no use of these processes. Direct extraction of the semen is like a minor mutilation. It is lawful for a proportionate cause. It is lawful, for instance, for the purpose of necessary medical examination.

It must be insisted that the theologians who maintain the liceity of this method of artificial fecundation will only allow it when there is a sufficiently serious cause and when due precautions to prevent deception are taken.[2] It is, they say, an abnormal, though not unnatural, means of propagation. And, as Father Kelly points out,[3] it is not at all likely that artificial fecundation will become a substitute for normal sexual intercourse in the case of those who are capable of such intercourse. The natural appetite will assert itself: the pleasure associated by nature with the normal act will prove a sufficient attraction. Men who can eat in the normal manner will not be much inclined to have themselves artificially fed. Father Kelly sums up as follows:[4] 'There is a very solid extrinsic authority for permitting this type of artificial fecundation between husband and wife, and it seems justifiable on intrinsic grounds. It has nothing in common with an unnatural sex act, such as pollution; or with a disordered sex act, such as fornication. In this method of fecundation, there is no frustration of sexual processes; and the child thus conceived is the offspring of parents united in the stable bond of matrimony, and thus naturally apt and obligated to provide for its welfare.'

It will be noted that Father Kelly does not base any argument for his view on the mere absence of venereal pleasure. Other upholders of the same view do, however, invoke the fact that venereal pleasure is excluded. Payen, for instance, writes:[5]

Cum in casu nostro neque sit pollutio neque delectatio venerea, probandus videtur seu *licitus* haustus seminis e testiculis viri qui sit legitimus maritus.

Yet, to our way of thinking, Father Kelly is wiser in eschewing the foregoing argument—which, as 'Lector' remarks, is neither sufficient nor fundamental. It must be remembered that

[1] Loc. cit.
[2] Cf. Kelly, art. cit., pp. 113–4.
[3] Loc. cit.
[4] Art. cit., p. 115.
[5] Loc. cit.; cf. Genicot, loc. cit.

venereal pleasure is not wrong in itself. It is intended by nature as the concomitant of the lawful generative act between husband and wife. Venereal pleasure is only sinful when it is indulged in apart from this generative act; in other words, the pleasure is wrong when it is dissociated from its natural purpose. Consequently, it is much more fundamental and, indeed, more correct, to consider the act, with which venereal pleasure is associated, than to consider the pleasure itself.

While we think that the intrinsic as well as the extrinsic probability of Father Kelly's arguments and conclusions might be admitted, we see very many serious difficulties against the position. Father Kelly and the other theologians who hold a similar view are not unaware of the difficulties. For the most part they claim no more than mere probability for their view.

On voit de suite qu'il y a une difficulté spéciale à admettre comme moralement licite, ce troisième procédé : l'acte normal, institué par la nature pour la fécondation, n' intervient pas, et tout se passe en dehors de lui. Toutefois, comme la fin de l'acte conjugal qui est la génération peut être obtenue, et obtenue sans délectation illicite, il n'y a pas lieu, *ce semble,* de condamner, au nom de la morale, cette troisième methode si vraiment, après la célébration valide du mariage, les rapports sexuels sont devenus impossibles.[1]

The difficulties against this view are so great that some theologians will not admit its intrinsic probability. Cappello maintains,[1] 'sine ulla cunctatione et dubitatione contra paucissimos aliter opinantes,' that artificial fecundation, according to the method we arc considering here, as well as according to other methods, is unlawful. De Smet and Merkelbach likewise seem to have no doubt regarding its unlawfulness.[3] Some theologians, like Prümmcr,[4] leave the question in the air.

The usual argument for unlawfulness is thus stated by Cappello,[5]

Actus enim *proprius coniugii* est *copula* seu *congressus maris et foeminae* cuius finis est utique procreatio prolis, sed *naturali modo* obtinenda, scii, per congressum maritalem, quo inficiatur *vitali actu* sperma a viro in vaginam mulieris.

Notwithstanding Father Kelly's able analysis of the right of married people to propagate, we would hold for the validity of the implications of Cappello's argument and conclusion.

1 Payen, *Déontologie Medicale,* n. 325; cf. Jorio, loc. cit., who says of the view in question ' non improbabiliter affirmat Vermeersch------' ; and Payen, *De Mat.,* loc. cit., writes : Saltern non *certe constat* hunc modum fcundationis esse intrinsece malum.'

2 Loc. cit.

3 Cf. loc. cit.

4 Th. Mor., iii, n. 799, 1 quidquid est de liceitate huius fecundationis artificialis . . .'

4 Loc. cit., italics are author's.

Father Kelly's contention that by marriage the husband and wife are set up as a generative unit with '*direct*' rights to propagate can be described as a gratuitous assertion which may be as gratuitously denied. Where in the whole doctrinal teaching on marriage is it implied that married people have rights to propagate other than those inherent in the right and obligation of conjugal sexual intercourse ?x Marriage is a consensual contract, and marriage consent is an act of will, whereby both parties give and accept bodily rights which are perpetual and exclusive for the purpose of acts which are naturally apt to generate offspring.2 It is true that the primary purpose of marriage is the procreation and education of children,3 but surely the definition of marriage consent, which makes the marriage,4*implies that procreation is to be achieved by acts which of themselves are calculated to generate offspring ? We are well aware that the personalist concept of marriage has been exaggerated by some recent writers to the detriment of the primacy of the procreational purpose.6 But nowhere has it been authoritatively suggested or implied that procreation is to be or may be attained by artificial means—when normal intercourse has become impossible. And is it so clear that the reply of 1897, quoted earlier, does not cover this species of artificial fecundation ? The contention that it does not requires some proof. Right through the encyclical *Casti Connubii* the question of the procreation of children is linked up solely with the due performance of the conjugal act. There is no semblance of a hint that offspring may lawfully be procreated in any other way.

We have seen earlier that venereal pleasure is associated by nature with the lawful performance of the conjugal generative act. In artificial fecundation (of the species under discussion), we have what Father Kelly would call a lawful generative act, an act to which the husband and wife, as a generative unit, have a direct right—yet an act in which no venereal pleasure may be taken. This seems strange. Does not the teaching that venereal pleasure may not be taken in artificial fecundation

1 It is a matter of terminology whether this latter right be described as direct or indirect.

2 Canon 1081, §2.

3 Canon 1013, § 1.

4 Canon 1081, § 1, 'Matrimonium facit partium consensus. . .

6 Cf. Dorns, *The Meaning of Marriage.* VVe gather from reviews that the subordination of the procreational aspect was even more strongly advocated in a work published in 1941 entitled *Die Zweckfrage de Ehe in Neuer Bleuchtung* by Rev. B. Krempel, C.P. ; cf. Decree of the Holy Office (March, 1944), on The Ends of Marriage.

(teaching which we are far from questioning) somehow suggat that artificial fecundation, of any kind, is not ever a lawful generative act ?

The accepted notion of impotence, and its relation to sterility, also lead us to reject the liceity of artificial insemination as a means of procreation. *If* there is an antecedent and perpetual incapacity—whether the incapacity is absolute or relative—to have normal intercourse, there is present the impediment of impotence—and the person so impeded cannot validly marry.[1] Yet, by means of artificial insemination, such a person might procreate offspring. Theologians have always distinguished mere sterility *(incapacitas generandi)* from impotence *(incapacitas coeundi).* Impotence is, of course, the much more serious and radical defect. It was regarded as comprising sterility. If a person was impotent, he was also regarded as sterile. But if we admit artificial fecundation we must abandon this relation of impotence to sterility. We have the radical defect of impotence side by side with the *capacitas generandi.*

Again, it is abundantly clear that artificial insemination does not consummate a marriage. We have a consummated marriage only

si inter coniuges locum habuerit coniugalis actus, ad quem natura sua ordinatur contractus matrimonialis et quo coniuges fiunt una ćaro.

It seems strange and almost contradictory to us that there could take place between husband and wife a *lawful* and *effective* generative act which does not consummate their marriage. We say this not to question the accepted and certain teaching as to how marriage is consummated, but rather to raise doubt regarding the liceity of artificial fecundation.

We think that there would be general agreement among theologians that a marriage would be invalid if it were contracted on the strict condition that only artificial insemination be used by the parties as a method of procreation. This condition would be regarded as being *contra matrimonii substantiam*[3] though, perhaps, not *contra bonum prolis.* Or, to put it slightly differently : if the right to artificial insemination alone is transferred, the marriage is invalid. In such a case, it would rightly be taken that all right to the proper conjugal act is excluded.[4] Why? Because artificial insemination is

[1] Canon 1068, § 1, [a] Impotentia antecedens et perpetua . . . sive absoluta sive relativa matrimonium ipso naturae iure dirimit.'

[2] Canon 1015, § 1.

[3] Cf. Canon 1092, 2°.

[4] Cf. Canon 1086, § 2.

not the conjugal act which is the object of the marriage contract,

coniugalis actus aci quem natura sua ordinatur contractus matrimonialis et quo coniuges fiunt una caro.

Artificial insemination is not matter for, is not covered by, the marriage consent and contract—which is but another way of saying (as Father Kelly himself has said) that the parties to marriage transfer no rights and assume no obligations whatsoever regarding artificial fecundation. This means of procreation, then, remains outside the conjugal sphere. And since it does, since it is not covered by the marriage consent, it might be said that there is a true sense in which there is little more reason for allowing it to the married than to the unmarried. And, of course, no theologian could, for one moment, entertain the suggestion that it would be lawful for the unmarried in any circumstances.[1]

The direct extraction of the semen from the epididymis for the purposes of artificial fecundation strikes us as being a disordered process.[2] It is not, we repeat, a conjugal act. As Merkelbach notes,[3] we can distinguish in this artificial fecundation two separate acts: the direct removal of the semen; the subsequent injection of it into the vagina. If the former act is wrong or disordered, the latter does not necessarily justify it. Subsequent injection of the semen into the vagina does not justify prior pollution to obtain the semen. As we pointed out earlier, Father Kelly denies that the direct removal of the semen from the epididymis is intrinsically wrong. It is, indeed, true there is not the abuse of sexual processes which we have, for instance, in pollution. But there is an unnatural interference with the semen,[4] a minor mutilation, which is surely wrong unless there is a sufficient cause to justify it. It has been suggested that the obtaining of a specimen for necessary physical examination would be such a cause. But this cause, if admitted as sufficient, could be entirely independent of the marital status of the patient. When the semen is used for artificial fecundation, where precisely is the justifying cause to be found? The only one which can be suggested is that the semen is used for procreation—a husband's semen is injected into the vagina of his wife. This, however, is an independent act which is only

[1] Father Kelly discusses this point. Artificial insemination between the unmarried, would, he says, be fornication 'not precisely as an act of disordered passion, but rather as a disordered generative act,' art. cit., p. 115.

[3] It cannot be described as 'actio de se tendens ad generationem.'

[2] *Loc.* cit.

[4] Merkelbach, loc. cit., speaks of 'abusus seminis humani cuius homo dominium non habet.'

associated, per accidens, with the direct extraction of the semen. Further, it may well be asked if this second act is itself lawful? There are reasons for questioning its liceity. It does not come under the marriage contract. It is not a conjugal act as contemplated in canons 1015 and 1081. The statement of Merkelbach[1] regarding artificial fecundation, *improprie dicta, ii* in point here.

> Aliud esset si rite peracta copula et semine non ad ostium quidem sed in *introitu* vaginae deposito, ibi, *quin ex vagina extrahatur,* recolligeretur et ope sypliunculi profundius ad uterum traiiceretur. Sic enim nullo momento semen ordinatione sua ad finem generationis privaretur; unde id non videtur esse nisi adiuvare naturam.

Arising out of this, we wonder if Father Kelly is prepared to accept the teaching of Jorio, who maintains the liceity of artificial fecundation

> praehabita copula imperfecta quae quavis de causa *perfecta* esse *non potest.* In hoc igitur casu, cum semen in interiores vaginae partes modo naturali deponi *non possit,* sed tantum ad eius ostium vel circa illud, medicus aut alius expertus vel ipse vir (si id valeat agere) semen ita depositum colligit ope siphunculi et in vaginam seu in uterum iniicit ut modo dictum est.[2]

The parallel often made between the appetite for food and drink and the sex appetite is a dangerous one, in the sense that, if pressed to any lengths, it leads to unacceptable conclusions. The sex appetite is *sui generis;* it has a special importance and sacredness which is one of the reasons why there cannot be parvity of matter 'in luxuria extra matrimonium directe et in se voluntaria.'[3]

These are some of the difficulties which can be urged against the view that artificial fecundation may be lawful when the semen is extracted directly from the epididymis. We do not say that these difficulties are unanswerable. But many of them seem to us to be grave, and we have not seen them satisfactorily answered. Father Kelly, in the article referred to, does touch on some of them, but his answers mainly hinge upon his analysis of the right of married people to propagate. If the validity of this analysis can be questioned, and it can, the force of his answers to the difficulties is greatly diminished.

The foregoing discussion has now only a historical interest. Fr. Kelly admits that, in the light of the pronouncement of Pope Pius XII,[4] his view can no longer be regarded as probable.

[1] Loc. cit., nota i.
[2] Italics are author's.
[3] Op. cit. n. 1304, Resp. 2°. To us this teaching seems to come dangerously near the contention that artificial insemination, *praehabita pollutione.* can be lawful.
[4] Cf. *Medico-Moral Problems,* p. 119.
[5] Cf. *infra,* pp. 237 et seq.

PAPAL STATEMENT ON ARTIFICIAL INSEMINATION

In 1949 the Fourth International Congress of Catholic Doctors was held in Italy. Pope Pius XII received the delegates in special audience at Castel-Gandolfo and delivered to them an inspiring and important address. A considerable part of this address dealt with the morality of human artificial fecundation. We feel that our readers will be very interested in having a résumé of the Pope's statement on this important and topical subject. We have used for our summary the French text[1] as published in *I.'Osservatore Romano* of 1st October, 1949.

In the earlier part of his address the Pope referred to the dignity of the medical and surgical profession—which he frequently described as a vocation. He spoke of the constant developments in the various branches of medical science and of the praiseworthy anxiety of doctors and surgeons to use, with due moderation, the most recent discoveries to alleviate pain[2] and to cure disease. But, the Pope reminded his audience that, while taking advantage of these recent developments, the doctor, in his practice, must above all have humanity of heart and the refinement of Christian charity, remembering that his ministration is not to bodies alone, but to bodies animated by, and intimately linked up with, immortal and spiritual souls. Natural and Christian morality sustains everywhere its imprescriptible rights, from which, and not from any consideration of feeling or of materialistic and naturalistic philanthropy, are derived the essential principles of medical deontology : the dignity of the human body, the pre-eminence of the soul over the body, the brotherhood of all men and the sovereign dominion of God over life and destiny. The Pope then remarked that on other occasions he had spoken on particular points of medical ethics, and that now he wished to deal with an urgent question of primary importance—the question of artificial fecundation[3]—

[1] The address was delivered in French. Our summary, which omits much of the earlier sections of the address, for the most part follows fairly closely the words used by the Holy Father. At a few points we purpose to give an exact translation and have added there a few comments of our own.

[2] Speaking of the use of drugs in childbirth, the Holy Father said : 'Le gynécologue, il s'efforce d'atténuer les douleurs de l'enfantement, sans toutefois mettre en péril la santé de la mère ou de l'enfant, sans risquer d'altérer les sentiments de tendresse maternelle pour le nouveau-né.'

[3] The doctors had discussed this question and called for condemnation of the practice by the medical profession at one of the sessions of their Congress, hence the Pope's words : 'Voici que se pose au premier plan une question, qui réclame, avec non moins d'urgence que les autres, la lumière de la doctrine morale catholique : celle de la fécondation artificielle.'

and to set out briefly and on general lines the Catholic moral teaching in its regard.

The Holy Father made the introductory point that the practice of artificial fecundation, since it is concerned with human beings, cannot be considered exclusively nor, indeed, primarily, from the biological and medical points of view. The question of morality and right cannot be left aside. There follows a vehement condemnation of artificial insemination outside marriage. The divine law, natural and positive, decrees that the procreation of new human life shall be the fruit of marriage alone. Only in marriage are the dignity of the spouses, the welfare and education of the children safeguarded. Equally to be condemned is artificial insemination of a married woman when the active element of generation is taken from a third party—that is from a donor other than the husband. The two spouses alone have reciprocal rights over their bodies for the purpose of generating new life. When the active element of fecundation is taken from an outside donor and a child is thus begotten—even though the married pair have consented—there is lacking here that bond of origin, that moral and juridical bond which should exist, as a natural result of conjugal procreation, between the child and the spouses. Before dealing with the liceity, within the married state, of other forms of artificial fecundation the Pope recalls certain principles of the natural law. He points out that the mere fact that the result aimed at, and a result legitimately desired by the parents—namely the begetting of a child—can be attained by the use of artificial fecundation, does not suffice to justify recourse to this means. And it would be false to think that the possibility of successfully using artificial fecundation, could render valid a marriage between persons who are canonically impotent. Moreover, it is superfluous to observe that the active element for procreation can never lawfully be obtained through acts which are opposed to nature.

It can be said that, up to this point, the Holy Father has simply outlined what has been the unanimously accepted teaching of Catholic theology. But he does not stop there. He now passes to what is the most interesting statement in the whole address—a statement that deals with aspects of artificial fecundation which have been somewhat in dispute among the moralists. Having pointed out that we cannot 'exclude, *a priori,* as unlawful new methods simply because of their novelty'—nevertheless,' he adds, 'with regard to artificial fecundation, not only are there grounds here for being extremely reserved,

but it must be entirely rejected That is not to say that one necessarily proscribes the use of certain artificial means which are destined solely either to facilitate the (performance of the) natural act or to ensure that the natural act, normally accomplished, attains its purpose.'[1] In this statement the Holy Father completely rejects artificial insemination properly so called. The use of artificial means to facilitate the natural act, or to help to ensure that this natural act, properly performed, attain its end, is not artificial insemination. It is sometimes called artificial aid, *l'aide artificielle*.[2]

In the subsequent paragraph the Pope indicates what seems to us to be a strong basic argument against artificial insemination. ' It should not be forgotten,' he said, ' that it is only that form of procreation of new life which corresponds to the will and the plan of the Creator[3] that brings with it, in an amazing degree of perfection, the realization of the purposes intended. This due procreation is, at one and the same time, in conformity with the corporal and spiritual nature and the dignity of the spouses and also with the normal and happy development of the child.'

In an address to the Italian Catholic Union of Midwives, 29 October 1951,[4] Pope Pius XII said :

To reduce the cohabitation of man and wife and the conjugal act to a mere organic function for the transmission of seed would be to reduce the home, sanctuary of the family, to a mere biological laboratory. For this reason in our address of 29 September, 1949 to the International Congress of Catholic Doctors we formally excluded artificial fecundation from matrimony. For the conjugal act, in its internal structure, is a personal act, a simultaneous and immediate co-operation of the spouses which by the very nature of the agents and the character of the act is the expression of the reciprocal gift which, according to the words of the Scripture, unites them ' in one flesh.'

[1] The original of this passage runs : ' Bien que l'on ne puisse a priori exclure de nouvelles méthodes, pour le seul motif de leur nouveauté, néanmoins, en ce qui touche la fécondation artificielle, non seulement il y a lieu d'être extrêmement réservé, mais il faut absolument l'écarter. En parlant ainsi, on ne proscrit pas nécessairement l'emploi de certains moyens artificiels, destinés uniquement, soit à faciliter l'acte naturel, soit à faire atteindre sa fin à l'acte naturel normalement accompli.'

[1] Cf. Hürth, ' La Fécondation Artificielle—Sa Valeur Morale et Juridique,' art. in *Nouvelle Revue Théologique*—juillet-août, 1946, pp. 402, et seq.

[•] Cf. Genesis ii, 24 : ' Quamobrem relinquet homo patrem suum et matrem et adhaerebit uxori suae et erunt duo in came una.' Cf. S. Matt, xix, 5-6.

[4] A.A.S. xliii (1951) p. 835.

DE VITIO ONANISTICO

Titius per multos jam annos onanisnum conjugalem exercet. Habet quattuor filios nec plures habere vult, quia, ut ait, eos juxta conditionem suam educare non potest. Praeteritis annis semper absolutus erat quia post confessionem per aliquot hebdomadas non utens matrimonio se ab hoc peccato abstinuerat ; quod et hoc ultimo anno fecit. Per reliquam partem anni semper de industria onanistice vixit. Nunc autem confessarius eum iterum validis rationibus hortatur et tandem ipsi absolute dicit ut aut debitum conjugale rite impleat aut deinceps ab usu matrimonii prorsus se abstineat. Ad primum respondit Titius hoc sibi impossibile esse; ad alterum dicit se iterum conaturum hoc facere. Confessarius graviter quidem de firmitate hujus alterius propositi dubitat, sed timens ne poenitens, si absolutio differatur, sacramenta prorsus deserat et in pejus ruat, ipsi dat absolutionem sub conditione.

Quaeritur (i) Quaenam sint munia confessariorum in vitio onanismi conjugalis propugnando; (ii) Quaenam remedia contra hoc vitium sint suggerenda ; (iii) Quid de modo agendi confessarii in casu ?

Tucson.

In Litteris Encyclicis Pii Papae XI, De Matrimonio Christiano, legimus

Sacerdotes igitur, qui confessionibus audiendis dant operam, aliosque qui curam animarum habent, pro suprema Nostra auctoritate et omnium animarum salutis cura, admonemus, ne circa gravissimam hanc Dei legem fideles sibi commissos errare sinant, et multo magis, ut ipsi se ab huiusmodi falsis opinionibus immunes custodiant, neve in iis ullo modo connivcant. Si quis vero Confessarius aut animarum Pastor, quod Deus avertat, fideles sibi creditos aut in hos errores ipsemet induxerit, aut saltem sive approbando sive dolose tacendo in iis confirmant, sciat se Supremo ludici Deo de muneris proditione severam redditurum esse rationem, sibique dicta existimet Christi verba 'Caeci sunt, et duces caecorum ; caecus autem si caeco ducatum praestet ambo in foveam cadunt.'

Juxta hanc doctrinam quae confirmat priora responsa Sanctae Sedis haec respondenda il

(i) Si prudenter suspicatur poenitentem esse onanistam, etiamsi omnino sileat de hoc peccato, confessarius tenetur eum caute interrogare. Si ex interrogatione vel e spontanea confessione onanista detegatur poenitens, etsi in bona fide existens, monendus est de gravitate hujus peccati et absolvi non potest nisi constet eum vere dolere de praeterito, et propositum firmum habere non peccandi de caetero. Etsi peccata onanismi iterum atque iterum, post plures absolutiones, admittantur, si adsit emendatio saltem partialis vel temporalis,

1 Cf. Mcrkelbach, *Quaestiones de Castitate et Luxuria,* pp. 121-2 ; Noldin, *De Sexto Praecepto,* nn. 75-6 ; Cappello, *De Sacramentis,* v, nn. 819-21 ; Jorio, *Th. Mor.,* iii, nn. 1332-5.

poenitens animandus est ad nova emendationis tentamina et absolvi potest. Si nullum signum emendationis praestet, videndum est num ex fragilitate vel ex malitia relapsus sit. In utroque casu confessarius, monitionibus exhortationibusque, in quantum potest, disponat poenitentem. Generatim in casu fragilitatis, non magna erit difficultas. Sed si, habitis exhortationibus, dispositiones adhuc vere dubiae remaneant, absolutio detur sub conditione vel differatur, juxta principia generalia, prout casus ferat.

(ii) Praeter remedia generalia contra peccatum et illa quae iam sunt enumerata in prima parte, confessarius debet explicare quomodo peccatum onanismi specifice opponatur fini primario matrimonii. Debet exponere effectus nocivos hujus vitii, periculum sanitati, periculum infidelitatis praesertim ex parte mulieris, etc. Quando poenitens urget, uti in casu, difficultatem educandi numerosiorem prolem, excitandus est fiduciam habere in Dei providentiam. Potest confessarius poenitenti, quem aliter a praxi onanistica abducere non valet, caute suadere ut, ex consilio medici, matrimonio utatur tempore tantum agencscos. Huc pertinet responsum S. Poenitentiariae, anno 1880 datum, ad quaestionem: 'An licitus sit usus matrimonii illis tantum diebus, quibus difficilior est conceptio?' Respondit S. Poenitentiaria:

Conjuges praedicto modo utentes inquietandos non esse, posseque confessarium sententiam, de qua agitur, illis conjugibus caute tamen insinuare, quos alia ratione a detestabili onanismi crimine abducere frustra tentaverit.

(iii) Non est inquietandus. Sed debuit indicare, putamus, esse tertium quid inter abstinentiam totalem ab usu matrimonii et usum onanisticum, nempe usum partialem durante periodo sterili—qui modus agendi, juxta exposita sub (ii), prudenter suaderi potest in casu.

EXCUSING CAUSE FOR MATERIAL CO-OPERATION OR PASSIVITY IN ONANISM

A woman allows marital intercourse with her husband who uses a contraceptive device. If she refuses she will have to suffer violence, and perhaps worse—her husband may leave her. A fellow-priest holds that such a person may remain passive since there is a very grave reason. I maintained that the act is intrinsically wrong, that it should be equiparated to sodomy and, therefore, that the woman may not remain passive even through fear of death—cf. Sacred Penitentiary, 3 April, 1916. Accordingly, I held that while permitting this kind of intercourse she cannot be absolved. Your comments will be gratefully received. E Longinquo.

It is unnecessary to remark that formal co-operation in onanistic intercourse is a grave sin. Our correspondent's query is concerned with material co-operation or passivity in onanism. The liceity *of this form* of co-operation has been much discussed and, over the past century[1], has been the subject of a number of replies[2] from the Holy Office and Sacred Penitentiary. It will be well to recall here the text of some *of* the more relevant replies. Our correspondent refers to one of them. In 1853 the following questions were submitted to the Holy Office:[3]

1°. An usus matrimonii sive onanistice sive condomistice fiat, prout in casu, sit licitus? 2°. An uxor, sciens, in congressu condomistico possit passive se habere?

The reply given to the first question was: '*Negative,* est enim intrinsece malus' and to the second question: '*Negative,* daret enim operam rei intrinsece illicitae.' In April, 1916, the Sacred Penitentiary was asked:[4]

Utrum mulieri actioni mariti qui ut voluptati indulgeat, crimen Onan aut Sodomitarum committere vult, iliique sub mortis poena aut gravium molestiarum minatur nisi obtemperet, licite co-operari possit?

In the reply the question of co-operation in natural onanism *[crimen Onan)* is first dealt with, and the second paragraph refers to co-operation in sodomy. The text of the reply is:

Si maritus in usu coniugii committere velit crimen Onan, effundendo scilicet semen extra vas post inceptam copulam, idemque minetur uxori aut mortem aut graves molestias, nisi perversae eius voluntati sese accommodet, uxor ex probatorum theologorum sententia licite potest hoc in casu sic cum suo marito coire: quippe cum ipsa ex parte sua det operam rei et actioni licitae, peccatum autem mariti permittat ex gravi causa quae eam excusat: quoniam caritas, qua illud impedire tenetur, cum tanto incommodo non obligat.

At si maritus committere cum ea velit Sodomitarum crimen, cum hic sodomiticus actus sit contra naturam ex parte utriusque sic coeuntis, isque Doctorum omnium iudicio graviter malus: hinc nulla plane de causa, ne mortis quidem vitandae, licite potest uxor hac in re impudico suo marito morem gerere. . . .

In June, 1916, the Sacred Penitentiary was asked three further questions:[5]

1°. Utrum mulier, casu quo vir ad onanismum exercendum uti velit instrumento, ad positivam resistentiam teneatur? 2°. Si negative, utrum sufficiant ad resistentiam passivam ex parte mulieris cohonestandam rationes aeque graves ac pro onanismo naturali (sine instrumento), vel potius omnino necessariae sint rationes pergravissimae? 3°. Utrum, ut tutiori tramite tota

[1] These replies have been collected and published by Rev. P. Batzill in a booklet entitled *Decisiones Sanctae Sedis—De Usu et Abusu Matrimonii.*

[2] Cf. Batzill, op. cit., p. 16.

[3] Ibid., p. 29.

[4] Cf. Batzill, op. cit., p. 30.

haec materia evolvatur et edoceatur vir talibus utens instrumentis, oppressori vere debeat aequiparari, cui proinde mulier eam resistentiam opponere debeat, quam virgo invasori ?

The replies given were : 'Affirmative,' to the first question ; ' Provisum in primo ' to the second question and 'Affirmative ' to the third question.

The distinction between natural and artificial onanism is well known. It is accepted teaching, as the foregoing replies imply, that material co-operation in natural onanism is much more easily justified than is material co-operation in artificial onanism.

Uxor non peccat si ob causam *mediocriter gravem* viro onanistae ante seminationem seee retrahenti debitum reddat aut etiam ab eo petat ; gravis autem causa est si secus incurrat mala gravia, v.g. dissidia in coniugio, verbera. . . .[1]

The reason for this teaching is obvious. In natural onanism the conjugal act is begun properly and, insofar as there is mutual co-operation therein, it is in a licit act. In the words of the Sacred Penitentiary, a woman who co-operates in the natural onanism of her husband ' ipsa ex parte sua dat operam rei et actioni licitae.' But the situation is entirely different when there is question of material co-operation in artificial onanism. And our correspondent's query is concerned with a species of artificial onanism : the man uses a contraceptive device in the act of intercourse. Thus the act is vitiated and unnatural *ab initio* and the wife may not willingly have any part in it. To do so would be to participate immediately in an action which is intrinsically evil.

Talis scii, ex utraque parte admissus congressus ab initio est vitiatus et intrinsece malus unde co-operatio etiam mere passiva est omnino illicita.[1]

The woman must positively resist the attempt of her husband to commit this sin of artificial onanism. In these circumstances, according to the reply of the Sacred Penitentiary in June, 1916, the husband is equiparated to a man who attempts to rape a virgin. The wife must proffer positive resistance and may discontinue this resistance only in face of *force majeure.*

Uxor tenetur pro viribus positive resistere et non potest cedere nisi praevalenti vi (ad instar mulieris oppressae).[1]

Yet many of the authors add that the fear or threat of a very great evil, such as death or something equivalent, is a sufficient cause to justify a wife's passivity in the artificial onanism of her husband. Cappello, for instance, writes :[4]

[1] Merkelbach, *De Castitate et Luxuria,* p. 114.
[2] Merkelbach, op. cit., p. 115.
[3] Ibid. ; cf. De Smet, *De Sponsalibus et Matrimonio,* n. 243.
[4] *De Sac.,* v, n. 817.

Uxor ad modum virginis violatae, totis viribus positive resistere debet nec passive se habere ipsi licet. At si metus exstet gravissimi mali, v.g. mortis vel gravium vulnerum, uxor quae mere passive se habeat et omnem consensum in delectationem excludat, peccatum non committit quia tunc proprie *patitur* matrimonii abusum, non permittit.

And in Payen we read of a wife's duty when her husband attempts artificial onanism

Debet pro viribus marito suo positive resistere. . . . Nec in hac lege est ulla exceptio nisi cogites casum quemdam rarissimum, id est timor gravissimi mali, qualis est mors et quale est morti iure aequiparandum. Tunc tantum... licet resistentiam positivam omittere et pati quod impedire nequit.

Many other similar quotations might be given. The implication of them all seems to be that fear of a very great evil like death is somehow equivalent to *praevalens vis.* Both refer to evils of a physical order.

Our correspondent claims that artificial onanism should be equiparated to sodomy and he refers to the reply given in April, 1916, by the Sacred Penitentiary. In this reply it was stated regarding sodomistic intercourse :

Nulla plane de causa ne mortis quidem vitandae licite potest uxor hac in re impudico suo marito morem gerere.

But it is hardly true to say that there is an exact equivalence of malice between artificial onanism and sodomistic intercourse. The latter must, we think, be regarded as the more heinous and more unnatural crime. The writers generally do not institute a comparison between the two sins and the reply of the Sacred Penitentiary just quoted does not imply that they must be equiparated. Merkelbach, however, suggests that the question of co-operation in sodomistic intercourse should be solved much in the same way as that of co-operation in artificial onanism.

Si enim onanismo artificiali co-opcrari nunquam est licitum, a fortiori id valet de modo sodomitico qui magis est perversus.

Yet in Cappello we find :[8]

Positiva co-operatio ad sodomiam numquam licita est. Ex gravissima causa uxor concubitum viri sodomiticum licite pati potest scu passive se habere potest sub hac duplici conditione : (a) quod hunc coitum impedire conetur et tunc solum toleret quando absque periculo gravissimi mali eum impedire non potest ; (t) quod delectationi venereac tunc suborienti non consentiat.

It is not easy to reconcile this statement with that part of the reply of the Sacred Penitentiary which we have quoted earlier

[1] *De Matrimonio,* iii, n. 2102.
[7] Op. cit., p. 118.
[8] Op. cit., n. 815.

in this paragraph—unless *impudico marito morem gerere* means something more than to remain passive in regard to the sodomistic act of the husband.

The various quotations which we have given in this reply will have indicated that both our correspondent and his priest friend can find some support in the authorities. Yet, on balance, the accepted position must be said to be, that a woman may remain passive in regard to the artificial onanism of her husband only when she has, for doing so, certain very grave causes. She may, of course, remain passive when she is no longer able to offer positive resistance, and also when her physical acquiescence is demanded under grave threat of death or of some equivalent evil such as serious wounding.[1] It is hardly necessary to remark that her moral acquiescence can never be forced and will never be lawful : she may not ever consent to the pleasure of the unnatural act of artificial intercourse. The causes mentioned are the only ones that are generally recognized as sufficiently grave to justify passivity in artificial onanism. These causes refer to a threat of grave, actual, physical danger. Other reasons, such as the threat of desertion or of adultery, though very serious in themselves, are not regarded as sufficiently grave in this context. In all this matter account must be taken of the dangerous consequences of allowing passivity for causes other than actual physical danger. Vermeersch writes :[2]

> Minae adulterii nequeunt sufficere ut uxor in hoc casu (coitus condomistici) accessum mariti passive toleret. Accedit haec gravis ratio. Si propter huiusmodi causam permittamus co-operationem ad actum intrinsece illicitum, commodum medium suppetiret maritis obtinendi a piis uxoribus quaecumque velint.

Reasons like the serious threat of desertion, cruelty, adultery, non-Catholic education of children would, if the husband refuses to be dissuaded, justify a wife in co-operating materially in the act of natural onanism.

[1] The following decree (n. 84) of the Fourth Provincial Council of Malines has frequently been quoted as giving a good summary of the accepted teaching : " Uxor quae contra voluntatem suam viro onanisticae praxi addicto co-operari adigitur, si maritus involucrum adhibeat, co-operationem utut materialem praestare non potest, quia huiusmodi actus in se pervertitur ; ob timorem gravissimi mali, puta mortis vel alius aequiparandi, ipsi licet non resistere oppressori."

[2] *Th. Mor.,* iv, n. 76.

INCURRING OF CENSURE ATTACHED *TO* CRIME OF ABORTION

Father Priimmer in his *Manuale Theologiae Moralis* (vol. ii. ŋ. 141) gives examples of means adopted for procuring abortion, and seems to hold that the taking of certain medicines and the use of other stated methods, while sinful because of intention, do not lead to the censure of excommunication. Can a confessor safely follow this teaching in forming his judgment in a given case, especially if the woman insists that the effect (say of a medicine) took place, because menstruation, after a time of cessation, took place again ? Is there any truth in the statement, often attributed to members of the medical profession, that no medicine is capable of producing the effect without at the same time poisoning the mother ? What about a case where a medicine (or drug) is taken in non-poisonous doses and is supplemented by abnormal exertions, and abortion occurs ? Presumably 'suggestion,' which is commonly said to lead to efficacious results when used with means *ex se* inadequate, would not involve the incurring of the censure. The textbooks do not appear very lucid in their treatment of this matter and a number of priests would be really thankful for your practical guidance.

F. X. W.

'F. X. W.' has managed to pack a host of points into his query. We shall try to deal with them, more or less in his order.

The law which attaches an *ipso facto* excommunication to the crime of procuring abortion is stated in canon 2350, § 1. The relevant section reads :

> Procurantes abortum, matre non excepta, incurrunt, effectu secuto, in excommunicationem latae sententiae, Ordinario reservatam.

In the context, the procuring of abortion means the artificial ejection, from its mother's womb, of a living non-viable human fetus. Clearly then there can be no question of procuring abortion *unless the mother is really pregnant;* otherwise there would be no living fetus to eject. Moreover, the penalty stated in the law is only incurred if the abortifacient agencies have worked successfully and the fetus has been actually ejected. This is the significance of the insertion *effectu secuto.*

Apart from serum tests, it is almost impossible to diagnose pregnancy with certainty in the early stages.[1] That is to say, in the first months of gestation it is difficult to decide by ordinary observation or examination whether or not a woman is pregnant. This will not seem strange to anyone who knows something of the

[1] La determinatione dello stato gravidico ore si prcscinda dai metodi sierologici non puô essere fatta con sicurczza se non a partire dal terzo mesc.' Pellegrini-Loro, *Compendio di Medicina Legale* (1940), p. 664.

germinal period of human life and the tiny dimensions of the human embryo.[1] There are indeed signs or indications from which the fact of pregnancy may be suspected. Among the indications most commonly mentioned is the cessation of menstruation. But it must be pointed out that this cessation is far from being a certain proof of pregnancy. The cessation may result from many other causes. Even in the case of a woman whose periods have been consistently regular, the interruption of menstruation gives only a probable indication of pregnancy. A modern medical authority has written :[2]

Sono segni di probabilità la sospensione delle menstruazioni, l'aumento di volum dell' addone nclla regione ipogastrica. . . . Neppure la preeenza di parecchi di questi segni autorizza una conclusione di certezza, in quanto essi possono verificarsi anchc per fatti diversi dallo stato gravidico.

Not merely is it difficult to give a certain diagnosis of pregnancy in the early stages, it is also difficult to know whether uterine emissions, in these same early stages, contain a fetus. In other words, abortions in the first months of pregnancy are not easily recognizable as such. They may even pass unnoticed.

All this discussion gives point to Prümmer's statement to which our correspondent refers. It will be well to have the actual text. It is :[3]

Unde peccant mulieres (saltem prava intentione) quae, timentes ne sint gravidae, variis modis menstruationem iterum provocant, e.gr. pedes lavando in aqua sale aut sinape condita, potiones expulsivas sumendo, ventrem comprimendo, excessivo modo saltando, etc. ; attamen cum primis mensibus post copulam carnalem habitam non possit certo sciri, num mulier conceperit, inde non inducuntur poenae latae contra procurantes abortum.

Priimmer, then, simply states, and he is well within the scheme of accepted teaching, that in the early months, by reason of the uncertainty of pregnancy, there is consequent doubt regarding the reality of the abortion. Because of this doubt the excommunication is not incurred. There is a general principle according to which it must be certain that the crime was really committed—otherwise the censure attached to the crime is not contracted.[4] A confessor should, of course, apply this principle in forming his judgment on any given case.

[1] Cf. Merkelbach, *Quaestiones de Embryologia* (1938 ed.), pp. 15 et seq.

[2] Palmieri, *Medicina Legale Canonistica* (1946), p. 215. Cf. Merkelbach, op. cit., p. 12, writes : 'Dicendum est indicia absolute certa ex quibus affirmari possit agi de praegnatione, primis temporibus non adesse, quia mutationes quae hoc tempore fiunt alias causas habere possunt' ; cf. Antonelli's description of 'false' and 'imaginary' pregnancies, *Med. Past.* (1906), i, nn. 249-50.

[3] *Manuale Th. Moralis,* ii, n. 141.

[4] Cf. Canon 2233, §1. 'Nulla poena infligi potest nisi certo constet delictum commissum fuisse et non esse legitime praescriptum.'

Even when a woman insists that menstruation was interrupted and recommenced only after abortifacient medicine had been taken, if there is no other certain evidence it will still remain doubtful whether the woman was really pregnant and, consequently, whether abortion was really procured. The penitent should be given the benefit of this doubt in the matter of the censure. What we have written about the difficulty of a certain diagnosis of pregnancy and abortion applies only to the early stages. And it is to this period that Prümmer also refers. From the third month onwards, as a result of the development of the fetus and other signs,[1] the certain existence of pregnancy can easily be established as can also the fact that abortion has really taken place.

Our correspondent asks if there is any truth in the statement that medicines, unless taken in toxic doses, do not cause abortion. We cannot do better in reply than to quote from the Report on Abortion presented to the British Ministry of Health by an Inter-departmental committee set up in 1937. Among the members of this committee were medical, legal and social science experts. In their Report we read :[2] 'Despite the widespread use of these drugs and preparations, it is only in a small proportion of cases that they appear to be successful. There is evidence to show that abortion may be produced by drugs which ordinarily have no abortifacient action, if they are taken in quantities to be severely toxic, causing a dangerous illness. There is on record a large number of authenticated cases of this type, many of which have terminated fatally. It appeared to be generally agreed also by medical witnesses who submitted evidence on this point that there is a limited class of women whose condition of health disposes them to abortion, and who may abort as a result of taking certain drugs in moderate quantities. Little precise evidence was submitted on this matter, and it may be that in some of these cases abortion would occur spontaneously, even if no attempt was made to induce it. There is no evidence that a drug or other preparation taken orally in non-toxic quantities can cause the abortion of a woman in normal health, and it is undoubtedly a fact that as a general rule they do not fulfil the expectations in which they are taken. It is possible that a virtue which is largely fictitious has been ascribed to them on the evidence of women who have taken them in the mistaken belief that they are pregnant.'

[1] Cf. Merkelbach, loc. cit.
[2] p. 42, n. 116; cf. p. 54, n. 157. This Report was published in 1939.

It seems, then, that certain drugs, if taken in toxic doses, are abortifacient. The taking by a woman of such doses for the express purpose of causing abortion would, if successful, bring her under the censure. It may well be that a means, inadequate of itself to produce abortion, becomes effective if used conjointly with some other agency. If this effectiveness be established, it seems to us that a woman who, in full awareness, places such a combination of means with the deliberate intention of causing an abortion which certainly followed, incurs the censure. The combination might be drugs in non-toxic doses plus abnormal physical exercise or plus suggestion. But, so far as we are aware, the abortifacient effectiveness of these combinations is not clearly established.[1] Our correspondent seems to imply that 'suggestion' is, of itself, effectively abortifacient. We have not been able to verify that implication, and we doubt its accuracy. If in any particular case it is doubtful whether or not an abortion which certainly occurred is the result of an action or actions deliberately placed to procure it, the doubt is to be solved in favour of the penitent. Such a penitent, while guilty of grave sin, will be presumed not to have contracted the censure. In Aertnys-Damen we read on this point.

Ad contrahendam censuram requiritur *effectus secutus,* et quidem ex causa eo consilio posita. Requiritur porro certitudo moralis quod abortus sit secutus ex illa causa; quia pro casibus dubiis non infligitur excommunicatio. Quamobrem non incurritur haec censura si probabile est abortum ex alia causa accidisse.[1]

THE SETTING UP OF ABLUTION CENTRES AND THE ISSUE OF PROPHYLACTIC PACKETS.

I would be most grateful to you for replies to the following questions which are giving us here much trouble. The questions are :—

1. May we approve of Ablution Centres, set up by the military authorities, for use by the soldiers on returning from leave after they had irregular relation with prostitutes ?

2. May we approve of the military authorities issuing prophylactic packets which do not contain contraceptives ? They are meant only for immediate use by the soldier when he thinks he may have been infected with syphilis.

3. May we approve of such packets being issued if they contain contraceptives also ?

Theologus.

[1] Cf. *Report of Inter-Departmental Committee,* p. 43, n. 117: 'Much more commonly—though again with small chance of success—a woman attempts to cause abortion by indulging in some violent physical exercise.'

[1] *Th. Mor.,* ii, n. 1073.

As a preface to our reply to the foregoing questions, which have been sent to us from England, we must recall the well-known principle by which theologians generally determine the liceity of an act which has good and bad effects. For the purposes of this discussion that principle may be stated thus: It is lawful to perform an act which, in itself, is morally good (or at least indifferent) from which good and bad effects follow, provided the good effect is not obtained by means of, and sufficiently compensates for, the evil effect. We might add that in order that the action be regarded as subjectively good the agent must have a right intention.[1] We take the questions in the order submitted.

1. The action of the military authorities, in setting up Ablution Centres, is, *in se,* at least morally indifferent. It may, however, have good and bad effects. The good effect is the lessening of the incidence of venereal disease by the cure or immunization of soldiers who may have been infected, or arc in danger of being infected—an effect which is of immense individual and social value and consequence. The evil effect is the possible inducement to sin which may arise from the feeling that unlawful sexual intercourse can, as a result of the Ablution Centres, be indulged in without fear of the consequences, without fear of becoming a victim of venereal disease. The good effect is independent of, is not obtained through the evil and, in our opinion, sufficiently compensates for the evil in this case. The inducement to sin is not direct. It is not, *per se,* a strong inducement. It is negative. It consists in the removal of what may be a sanction, namely, the fear of contracting venereal disease. We have written 'what may be a sanction,' because it is, indeed, questioned how far, in many cases, such a sanction really exists. The reply of a medical expert, who had been consulted on a similar point, is *apropos.*[2]

Au point de vue pratique, le fait de faire disparaître ccs maladies (vénériennes) n'aurait pas pour résultat d'enlever un frein à l'inconduite, pour la simple raison que *ce frein-là n'existe pas.* En effet, contrairement à une idée trop répandue dans le public, la crainte des maladies vénériennes est *absolument inopérante* pour retenir un jeune homme dans la voie de la chasteté. Ceci un *fait d'expérience* constante pour nous médicins. Nous connaissons tous le spectacle classique du malheureux, chez qui une première atteinte provoque les plus sages résolutions fortement exprimées, et que nous retrouvons, lamentable récidiviste, quelques semaines après!

[1] Cf. Prümmer, *Th. Mor.,* i, n. 57 et seq.; Walsh, *De Actibus Humants,* n. 155 et seq.

[2] Dr. Ed. Hawthorn quoted by E. Jordan: *L'Eglise et l'Eugénisme,* p. 156 et seq. The italics are the author's.

It is our opinion, then, that the setting up of Ablution Centres by the military authorities may be approved. Care should be taken, however, that the provision of such treatment is not interpreted by the soldiers as approval of their illicit intercourse. Dealing with the duties of a medical doctor a French author[1] has well written as follows :

Un médecin de la marine, embarqué sur un bâtiment de l'escadre de Chine, constatait que les marins, qui, durant les exales, descendaient à terre, en profitaient pour ce que l'on devine : l'état sanitaire était deplorable. Il institua un visite obligatoire, passée au moment du retour à bord. 'Tu as été . . .? Oui . . . Eh bien, voici ton ordonnance.' Résultat : une diminution considérable des cas de maladies vénériennes. *Ce médicin a-t-il fait son devoir?* Certes oui ! - - - *Mais a-t-il fait* **tout** *son devoir?* C'est selon. Oui, s'il a évité de leur suggérer cette idée : 'Il faut que ma conduite soit tout à fait naturelle, puisqu'on s'y attend, qu'on la présume, et que tout est prévu pour y parer.'

Another French writer[2] has added this comment on the quotation just given :

Entendons-nous cependant. Le médicin n'a pas besoin de faire un sermon. Un mot, un geste lui suffra à marquer son blâme.

2. The points we have made above apply equally, we think, to the problem raised in the second question if the prophylactic packets are issued to soldiers *post factum*—that is after infection or danger of infection. If they are issued *ante factum,* for example to soldiers before going out on leave, then the situation seems to be slightly different. Yet we think that in this case, too, the issue of the packets is, *per se,* morally indifferent. They are meant for immediate use by the soldier only when he thinks he may have been infected. The good effect, the prevention of a dread disease, is not obtained through the evil, that is through the possible inducement to sin. The latter seems, however, to be greater here than in the former case.

Du conseil de prudence dans la débauche au conseil de débauche prudente il n'y a qu'un pas. - - - Il est vite franchi.[1]

Yet the inducement to sin remains indirect, negative and uncertain. If it is made clear officially to the soldiers by the military authorities that they disapprove of immoral intercourse by the soldiers we think that the issue of prophylactic packets may be tolerated. The good seems to outweigh the possible evil. Or, looking at the question from another angle,

[1] E. Jordan, op. cit., p. 153 et seq. Italics again are author's.
[1] Payen, *Déontologie Médicale,* p. 208.
[1] E. Jordan, op. cit., p. 150. The direct reference is to an address by a doctor on prophylactics.

the issue of such packets may even be regarded as the lesser of two evils, and thus morally tolerable. It is a well-known principle that one determined upon an immoral course of action may be advised to follow a less evil course in the same order.' On this principle a soldier determined to have recourse to immoral sexual intercourse may, if he cannot be dissuaded, be advised to use, and even be provided with prophylactics against venereal disease.[1]

The degree to which the issue of these prophylactic packets is an inducement to sin becomes ultimately a question of fact, for a judgment on which we have not all the necessary data, and on which, therefore, we cannot presume to give any final decision. We have had to be content with theoretic considerations, and the opinion of those who might be regarded as competent to judge. Thus we have quoted earlier the opinion of a medical expert who thinks that the fear of contracting venereal disease is not, to any great degree, an effective check upon sexual immorality. But, that opinion notwithstanding, if it has been found, in point of fact, that the issue of the prophylactic packets has led to a great increase of immoral sexual relations, then the practice may not be tolerated. For the good would not compensate for the evil. Nor could it be argued by any means that, in these circumstances, the issue of the packets would be the lesser of two evils. We can, indeed, conceive circumstances in which, by reason of the manner of issue or the professed attitude of the issuing authorities, the issue of packets might be regarded as an almost direct inducement to sin.[3]

3. The issue of prophylactic packets which also contain contraceptives should, in our opinion, be condemned. A direct and positive effect of such issue is the provision of means which can only serve directly an immoral purpose. Any good effect that is obtained through the use of contraceptives is dependent upon a more primary, a direct evil effect, and such

[1] Cf. Priimmer, op. cit., i, n. 611.

[2] Payen, op. cit., p. 208, writes : 'Avant de se rendre où vous savez, un jeune homme vient trouver le médecin. Il solicite de lui une injection qui sera mieux faite, un préservatif qui sera mieux appliqué. La loi morale permet-elle au médicin de condescendre à cette demande ? Bien que la question soit assez délicate, nous répondons oui, mais après de vains efforts pour détourner de son mauvais dessein un pauvre homme, que la passion emporte.'

[3] Writing again of the duties of a medical doctor, Jordan says : ' Indiquer les moyens de commettre impunément un acte immoral (et se taire sur l'immoralité de cet acte—adds Payen, loc. cit.) n'est-ce pas inciter à le commettre et s'en rendre complice ? ' op. cit., p. 150.

use is, therefore, always unlawful. Even though the packet of which there is question here, apart from the contraceptives, might serve a good and useful purpose, the inclusion of the latter corrupts, if we may so speak, the contents of the whole packet.

Father Henry Davis, S.J., to whom we had privately written our opinion on the question before us, sent, in reply, his own opinion. He wrote : " My opinion *salvo meliori judicio,* is (1; that there is no objection to setting up Ablution Centres ; (2) that the issue of prophylactic packets to individual soldiers *officially* will be calculated to lower the sense of public morality among soldiers and civilians. Therefore, I condemn the issuing of them. I would not object to soldiers being told where they can get the packets if they need them. (3) I agree that the issue of packets which contain contraceptives is to be condemned.'

CONTRACEPTIVES AND PROPHYLACTICS

The following queries are all connected with points provoked by reading your treatment concerning contraceptive and prophylactic packets.

1°. Uxor, e rationibus solidis, suspicatur virum suum infidelem fuisse et contraxisse luem venereum. Quaeritur an licitum sit huic uxori, immediate post copulam conjugalem, uterum lavare lotionibus prophylacticis, etsi bene noscat has lotiones de facto impedire conceptionem prolis ? Medici periti dicunt meliores lotiones prophylacticas semper impedire conceptionem. In casu uxor intendit solum finem bonum prophylacticum.

2°. Si eadem quaestio ponitur de muliere innupta quae fornicationem patravit cum viro forsan syphilitico—quid respondendum est ?

3°. Quaeritur utrum mulier quae, fornicatione voluntarie commissa, immediate post copulam semen expulsit rea sit duorum peccatorum contra sextum praeceptum specifice distinctorum ?

4 . Vir, in patranda fornicatione, utitur involucro ad praecavendam conceptionem. Quaeritur an illi sufficiat confiteri simpliciter peccatum fornicationis quin teneatur mentionem facere de modo onanistico ?

5°. Si poenitens, aut vir aut mulier, confitetur peccatum fornicationis et confessarius valde suspicatur conceptionem aliquo modo impeditam fuisse an debeat ulterius interrogare poenitentem ?

Cappellanus.

1.°. Si uxor moraliter certa est—mera suspicio non sufficit—virum suum adulterium commisisse vel luem venereum contraxisse, tunc non tenetur reddere debitum sed retinet jus suum

petendi et reddendi,[1] quod exercere licet, non obstante periculo, ex justa causa. Et debito reddito, etiam viro syphilitico, numquam licet uxori lavare uterum vel vaginam immediate post copulam ita ut semen expellatur.[2] Nec licitum est ei uti lotionibus vel aliis mediis, sic dictis prophylacticis, quae directe destruunt vitam, ut ita dicam, seminis, in utero, vel in vagina. Nam in tali casu effectus bonus prophylacticus non obtineretur nisi mediante effectu malo, nempe destruendo semen et impediendo possibilitatem conceptionis prolis. Et, nostra opinione, illicitum est adhibere media prophylactica quae certe et in omni casu, etsi indirecte, destruunt semen et sic praecaveunt conceptionem. In hoc casu effectus malus est certus et ita gravis ut permitti nequeat ad removendum periculum contagionis. Admittatur, ut in hypothesi, effectum bonum directe vel immediate causari sed nihilominus negari potest causam sufficientem adesse.[8] De Smet, autem, benigniorem opinionem tenet in hoc ultimo casu. Scripsit enim :[4]

In casu periculi contrahendi contagionem ex redditione debiti : quo casu videtur ipsi non esse illicitum adhibere remedia prophylactica ad removendum, aut saltem minuendum, contagionis periculum, puta iniectiones peragendas, licet hae iniectiones, simul ac destinantur ad delenda morbi semina, etiam occisivae existant pro spermatozoidis : habemus scii, hic causam cum duplici effectu aeque immediato, uno bono, altero malo, ita ut solus bonus effectus intendatur.

Licitum autem esset uti lotionibus vaginalibus prophylacticis, ad conservandam sanitatem vere necessariis, etiamsi tales lotiones indirecte, sed probabiliter tantum, impediunt conceptionem prolis. (Praesupponitur semper ad licite agendum in tali casu quod agens intendit tantum finem prophylacticum.) Itaque dicunt moralistae licitum esse, sanitatis causa, lavare vaginam elapsis aliquot horis post coitum.[6] Tum durante, tum peracta copula conjugali, licitum quoque esset uti aliis mediis prophylacticis quae non sunt directe nec certe occisivae pro spermatozoidis etiamsi propterca conceptio reditur minus probabilis vel improbabilis, modo adsit aliquae necessitas coeundi et verum

[1] Cf. Noldin, *De Sexto Praecepto,* n. 91 ; Merkelbach, *De Castitate et Luxuria* p. 124.

[*] Cf. Noldin, op. cit., n. 69; Merkelbach, op. cit., p. 120; Davis, *Moral and Pastoral Theology,* iv, p. 252 ; Cappello, *De Sac.,* in, n. 797.

[•] Cf. Merkelbach, op. cit., p. 121.

[•] *De Sponsalibus et Matrimonio,* ŋ. 236, nota 2.

[*] Vermeersch, *Th. Mor.,* iv, n. 69, *putat unam horam sufficere. " Lotio vaginalis post horam a copula in se illicita dici nequit." Haec sententia secundum alios theologos est nimis benigna.' Cf. Merkelbach, op. cit., p. 116 and Cappello, op. cit., n. 797.

periculum contrahendi luem venereamtamquam causa sufficiens et intentio agentis sit recta. Payen ponit quaestionem il

Une femine demande si elle peut, sans faute grave, se servir, durant l'acte conjugal, d'une *pommade antiseptique* qui aura un double effet : l'un direct, et voulu par elle, de diminuer le danger de contagion ; l'autre indirect, et non voulu, d'empêcher *peut-être* la conception.

Et sic respondet :[2]

En vue d'échapper, autant que possible, à la contagion, une femme mariée ne peut rien faire qui s'oppose, avec une *certitude morale* à la conception. Mais il lui est permis d'employer un préservatif qui ait le seul inconvénient de rendre la conception moins probable.

2°. Fornicationis actu semel patrato cum viro syphilitico—id est post factum—nobis videtur licitum esse mulieri innuptae uti mediis prophylacticis perinde ac licet uxori. Sed recolatur praesertim (a) certitudinem moralem de statu syphilitico viri requiri ; (6) nihil licitum esse quod sit directe vel certe occisivum pro spermatozoidis ; (c) solum finem prophylacticum intendere licere. Durante actu fornicationis vel antea non licet mulieri innuptae adhibere praedicta prophylactica quae, etiam probabiliter tantum, occisiva essent pro semine. Non adesset, in tali casu, causa sufficiens, nam, tamquam innupta, nullum habet jus ad copulam carnalem, nec jus petendi nec jus reddendi ; e contra coitus in casu prohibetur sub duplici titulo.

3°. Affirmative. Sunt dua peccata specifice distincta contra sextum praeceptum—fornicatio quae quidem est secundum naturam et abortus seu perditio seminis quae est peccatum contra naturam. Et, nostra sententia, peracta fornicatione et semine deposito in vase debito, panim refert utrum mulier voluntarie an involuntarie—si fieri possit—fornicaverit : in neutro casu licet expellere semen.[3]

4°. Copula imperfecta in qua adhibetur involucrum ad retinendum semen vocatur fornicatio onanistica quae specie differt a fornicatione simplici. Fornicatio onanistica est duplex peccatum : fornicatio (inchoata) et pollutio. Primum peccatum est secundum naturam, alterum est contra naturam. Non sufficit igitur ut poenitens confiteatur simplicem fornicationem. Tenetur confiteri duplex peccatum, vel dua peccata, ut integra sit ejus confessio. Sed, ut ait Merkelbach,[4]

[1] *Déontologie Medicale,* n. 209.
[2] Loc. cit.
[3] Cf. Merkelbach, op. cit., p. 45, 46 ; *Quaestiones de Embryologia,* p. 43, et in Appendice. [4] Nonnulli auctores tenent licitum esse mulieri vi oppressae semen lotione expellere, immediate post copulam. Semen dicitur esse iniustus aggressor.' Cf. Noldin, op. cit., n. 69 ; Lehmkuhl, *Th. Mor.,* i, n. 1013 ; Genicot, *Th. Mor.* ; Davis, op. cit., p. 251 ; Cappello, op. cit., n. 797.
[5] *De Castitate,* p. 42. Cf. Noldin, op. cit., n. 15.

in praxi hacc distinctio ignorari potest ; nam circumstantia onanismi inter solutos saepe ut non libidinosa sed potius ut culpam minuens apprehendi solet. Unde licet fornicatio onanistica sit peccatum obicctive gravius, non tamen semper subjective ; sed pro affectu et intentione erit gravior vel minus gravis quam fornicatio perfecta. Qui copulam onanisticam eligit, ut minus noceat feminae et societati minus perverso affectu ducitur quam qui onera mulieri timenda contemnit, ut sibi plenius satisfaciat. Qui vero voluptatem sine onere quaerit, magis peccabit quam qui connexa onera resignato animo ferre studeat ut secundum naturam agat.

5°. Affirmative, propter rationes datas in praecedenti responso. Sed interrogatio debet esse valde discreta et prudens, ne forte confessarius doceat modum patrandi peccatum pocnitentibus iam ignotum neque scandalum det.[1] In hoc casu jus naturae, quo vetatur scandalum, observandum est potius quam jus divinum positivum quo praescribitur integritas materialis confessionis.

PROPHYLACTICS, CONTRACEPTIVES AND THE LESSER OF TWO EVILS

A reply to the following queries would be appreciated :—

(1) Bene notum est meretrices semper aut steriles esse aut, post copulam carnalem, uti mediis prophylacticis quae praecaveant conceptionem prolis. Praeterea, meretrices saepissime a morbo venereo laborant. Nunc, his praesuppositis, nonne licet suadere viro ut in actu copulae adhibeat involucrum, si iam vere determinatus sit copulam habere cum meretrice, et non possit averti ? Nam, ex una parte, licet suadere minus malum alicui ad majus determinato ; et, ex altera parte, opinione medicorum, usus involucri est optimum medium prophylacticum ad vitandum periculum contagionis, et periculum contrahendi morbum venereum est maximum in hoc casu.

(2) Admittitur adulterium onanisticum majus peccatum esse quam simplex adulterium *relative,* relate ad luxuriam. Sed, nonne verum est adulterium simplex majus peccatum esse quam adulterium onanisticum *absolute,* relate ad luxuriam et injustitiam ? Lessius, agens de relativa gravitate peccatorum luxuriae, scribit[2] : 'Hae species (contra naturam) sunt pejores quam reliquae supra dictae (juxta naturam) si considerentur qua parte sunt contra castitatem, non autem si spectentur absolute, ut involvunt malitiam alterius speciei contra justitiam, pietatem vel religionem : simplex enim pollutio vel inordinatus concubitus cum uxore non est absolute majus peccatum quam concubitus cum matre vel moniali.'

His omnibus perpensis, si vir determinatus sit adulterium committere et si sit impossibile eum ab hoc peccato avertere, nonne licitum est ei suadere ut utatur involucro—quia, ut iam dictum est, adulterium tali modo peractum minus peccatum est in casu '

Cappellanus.

[1] Cf. Merkelbach, loc. cit.

[2] *De Jusi, ht Jure,* l. 4, c. 3, n. 93; cf. Gcnicot, *Th. Mor.,* i, n. 160.

(1) Concessis praesuppositis, nostra opinione, non licet suadere viro, iam vere determinato copulam cum meretrice habere, ut utatur involucro in actu copulae, ad removendum contagionis periculum. Principium citatum de suasione minoris mali non valet in hoc casu. Nam illud principium validum tantum est quando in *primis*[1] quaestio est de suasione minoris mali *moralis* et revera usus involucri in copula seu coitus onanisticus cum meretrice est majus malum morale quam coitus naturalis. Coitus onanisticus est peccatum luxuriae contra naturam. Idcoque, ut ex dictis obvium est, viro determinato coitum naturalem, etiam valde periculosum sanitati, habere cum meretrice non licet suadere coitum onanisticum eo titulo quia hic est minus periculosus. Concedatur minus malum vel periculum *physicum* (id est contagionis) adesse quando vir utitur involucro, sed hoc nullo modo justificaret suasionem copulae onanisticae. Tunc tantum aestimatio mali physici ad solvendum casum hujusmodi recte invocari potest quando dua mala moralia aequalia sunt. Et in casu proposito haec conditio non verificatur.

Etsi moraliter certum est copulam cum meretrice semper esse infructuosam propter defectum physiologicum aut ex eo quod meretrix adhibet media prophylactica quae impediunt conceptionem prolis—argumentum quod derivatur in quaestione ex illa sterilitate nihil valet. Si valeret quidem haud esset dubium quin concludere debeamus omnes steriles, exempli gratia senes mulieres media praeventativa et onanistica, sanitatis causa, licite semper adhibere posse.[1] Quod absit. Etiamsi meretrix ipsa utitur in actu copulae, vel iam usa est ante actum, mediis quae certe impedient conceptionem prolis, ex illo non sequitur usum involucri tunc viro licere. Si contenditur quod, in tali casu, copula iam innaturalis est propter actum meretricis et ideo quod adhibitio involucri ex parte viri nullam novam malitiam addit, respondere possumus verum esse actum iam innaturalem esse ex parte meretricis sed non praecise ex parte viri. Quando autem adhibetur involucrum totus actus pejor est, quia est contra naturam ex utraque parte, seu sub duplici titulo. Forsan non adest nova species malitiae sed adest major malitia in eadem specie et ideo majus peccatum.

[1] Requiritur quoque altera conditio, videlicet ut minus malum sit virtualiter contentum in majori, cf. infra.

[2] St. Thomas *Quaes. Disp., De Malo,* xv, a. 2 ad 14 scribit: "Ideo dicitur actus ille esse contra naturam in genere luxuriae, ex quo non potest sequi generatio secundum communem speciem actus, non autem ille ex quo non potest sequi propter aliquod particulare accidens, sicut est senectus vel infirmitas."

Concedi nullo modo potest quod totiescumque mulier adhibet media praeventativa quotiescumque viro fas est, sanitatis causa, uti involucro. Sed illa conclusio sequeretur si liceret viro, in circumstantiis casus involucrum adhibere. Involucrum forsitan est optimum medium prophylacticum sed *primarie* est medium contraceptionale, medium quod directe impedit quominus semen virile secundum naturam[1] deponatur in vase debito muliebri. Et finis prophylacticus quamvis bonus non potest justificare medium in se malum et innaturale.

(2) Adulterium onanisticum est duplex peccatum : peccatum luxuriae contra naturam et peccatum injustitiae propter laesionem jurium maritalium. Eodem fere modo, simplex adulterium est duplex peccatum : peccatum luxuriae sed juxta naturam et peccatum injustitiae propter eandem laesionem supra relatam. Et nobis videtur nullum esse dubium quin prius peccatum, id est adulterium onanisticum, pejus sit in ordine morali objectivo. Ideo non licet illud peccatum suadere tamquam minus malum alicui determinato adulterium simplex committere. Loquimur de malitia objectiva, non de malitia subjectiva, quia facile, et forte saepe, propter falsam aestimationem rerum, adulterium simplex putatur esse gravius peccatum et ideo, si tali conscientia fieret, esset subjective gravius.

Iam privatim scripseramus de hac materia ad ' Cappellanum,' et ejus responsione proposuit objectionem sequentem contra doctrinam nostram.

In utroque adulterio duplex est peccatum—luxuria et injustitia. In casu adulterii onanistici peccatum luxuriae, quia est contra naturam, est quidem majus quam peccatum luxuriae in adulterio simplici. E contra, autem, quando quaestio est de peccato injustitiae. In adulterio onanistico minor est injustitia quia proles concipi non potest. Non liquet igitur quidnam ex duobus peccatis adulterii sit *absolute* majus. Forsan minor luxuria una cum majori injustitia saltem adaequat in malitia majorem luxuriam una cum minori injustitia.

Sed nobis videtur hanc objectionem non esse validam. Ad dignoscendam gravitatem peccati actus peccandi ipse primarie considerandus est. Et considerato actu peccandi in hac materia, injustitia in utroque adulterio videtur esse aequalis—nempe laesio gravis jurium matrimonialium. Ergo peccatum adulterii onanistici pejus est quia in eo est pravior luxuriae actus.

Verba Lessii quae citantur in quaestione non sunt ad rem. Ex verbis ipsis et ex contextu manifestum est comparationem

[1] Concubitus secundum se dicit ordinem ad generationem ; ac proinde secundum ea quae ordo iste postulat, lex naturae est intelligenda ; cf. Merkelbach : *De Castitate et Luxuria,* p. 41.

fieri inter peccatum quod unam tantum speciem malitiae continet et peccatum in quo duplex malitia invenitur. Consideremus exempla quae dantur. Comparantur pollutio et concubitus cum moniali. Pollutio est peccatum luxuriae contra naturam sed unam tantum speciem malitiae moralis continet. Concubitus cum moniali, etsi sit, in materia luxuriae, juxta naturam, est pejus peccatum quia adest, praeter malitiam luxuriae, nova malitia propter sacrilegam violationem virtutis religionis. In quaestione nostra autem tum in adulterio onanistico tum in adulterio simplici iam adest duplex malitia—luxuria et injustitia.

Principium de suasione minoris mali invocari non potest ad solvendum hunc casum quia malum quod suaderetur reapse esset majus malum quam illud ad quod vir determinatus est Nec licet, nostra sententia, suadere 'minus' malum alicui determinato ad majus nisi 'minus' sit virtualiter contentum in majori. Si quis igitur vere determinatus sit adulterium committere non licet ei suadere simplicem fornicationem. Nam recolendum est illum iam interne, ex prava intentione determinata, peccatum adulterii commisisse et ejus malitiam contraxisse.[1] Si tunc, propter suasionem, fornicationem facit revera committit novum peccatum tum internum tum externum. Nova malitia additur quin auferatur malitia prioris peccati. Suasio igitur in tali casu reapse secumfert augmentum non diminutionem mali moralis. Et is qui suadet est causa novi peccati. Doctrina magis clarescet si sumitur exemplum ex materia justitiae. Petrus determinatus est viginti libras sterlingas furari a Paulo paupere. Non licet Petro suadere ut potius minorem summam pecuniae furetur a Matthaeo qui est vir ditissimus. Et talis suasio si daretur esset vere injusta erga Matthaeum.

THE MORALITY OF THE USE OF TAMPONS

I would be very grateful for your opinion on the morality of the use of tampons. It was stated recently in a Catholic newspaper that it is unlawful to use them. But this opinion is not accepted in Catholic medical circles in England.

Rusticus.

[1] Cf. Priimmer, *Th. Mor.,* i, n. 133, n. 611 ; Noldin, *De Praeceptis,* n. 113 qui scribit sic. 'Non licet proximo suadere minus malum, ad quod committendum nondum est determinatus : etenim qui alteri suadet malum, ad quod committendum non est paratus ipse causa est illius mali quod peccatum est etsi ex bono fine agat.'

Our correspondent's query suggests two questions regarding the use of internal vaginal tampons—a medical question and a moral question. Is the use of these tampons physically or medically harmful? Is this use morally unlawful? But the two questions are closely connected, at least in one respect. For if it is clear that the use of internal vaginal tampons causes harmful physical effects; if, in other words, the first question is answered in the affirmative, then it would seem to follow that this use must be regarded as morally unlawful—since tampons are not a necessary means towards attaining the purpose for which they are employed. It should be added, however, that a negative answer to the first question would not at all necessarily lead logically to the conclusion that tampons may lawfully be used. There are other factors to be taken into account before that conclusion could be reached. For instance, if the use of tampons necessarily involved immoral consequences—the fact that they were medically advantageous would not justify their use.

'Rusticus' asserts that Catholic medical opinion in England favours the use of these vaginal tampons. This should imply that the doctors believe that no harmful effects follow their use. We cannot accept our correspondent's assertion. We have read in *The Catholic Medical Guardian,* January, 1941, and in *The Catholic Medical Quarterly,* July, 1948, statements which very definitely give the contrary impression. The statements record the considered opinion of a well-known gynaecologist who makes a number of points against any general use of tampons. They are useless for many patients; for others, especially for the young, they are harmful—physically harmful—that is, and very frequently, by reason of the manner of their use, they prove unhygienic. Another authority, in an address to the Westminster Branch of the Guild of St. Luke, SS. Cosmas and Damian, stated that: 'one of the tragedies of school life to-day is that young girls of fifteen and sixteen years of age are allowed to use the so-called internal tampons.'[1] Apparently when such appliances are used, organisms and infection are oftentimes introduced into the cervical canal, and damage or alteration to the mucous membrane of the *cervix uteri* may result. A large undenominational Committee of women, at a meeting in London in 1940, 'strongly objected to the use of internal tampons and especially protested against such things being foisted by shops on young girls.'[2]

[1] *The Catholic Medical Quarterly,* i, n. 4 (July, 1948), p. 113.
[2] Ibid., p. 112.

All this clearly indicates, we think, that the use of tampons is widely regarded as being liable to cause physical injury. And, as has been noted earlier, this fact, in the circumstances that internal tampons are unnecessary, implies that their use is morally unjustifiable. The risk of physical injury may not lawfully be undertaken without a proportionate compensating cause. There may well be cases in which no deleterious effects result. But that is not the general situation. We have been asked a general question. We can only give a general reply.

There is another consideration—and a more directly moral consideration. It seems that the use of internal vaginal tampons can easily be a grave source of temptation, especially to those who have strong physical desires. For this reason also their use must be regarded as morally suspect, and indeed, as definitely unlawful in view of the forementioned absence of any necessity —since, of course, moral risks may not needlessly be taken. In 1940 at the Low Week meeting the Catholic Hierarchy of England and Wales 'disapproved of the use of internal tampons instead of sanitary towels, and asked the Union of Catholic Women to make their decision known to all Catholic Women's Societies.'[1]

IMMORAL METHODS OF OBTAINING SEMINAL SPECIMENS FOR STERILITY TESTS.

We have had a long letter from a correspondent who signs himself 'Medicus.' In this letter the question of sterility and the problems created by certain methods of obtaining seminal specimens for sterility tests of the male are raised. In particular we are asked about the morality of two methods which, it is claimed, give the optimum results from the medical point of view. It will suffice, for the present, to say in reply that these two methods are *absolutely* unlawful and that, consequently, medical results, no matter how valuable, cannot justify them. A reply of the Holy Office, issued in 1929, covers the first method mentioned—namely, direct masturbation. We shall quote the question and the reply in English[2]—for the presumably greater convenience of our correspondent. The

[1] Ibid, p. 112.

[2] We give Bouscaren's translation, *Canon Law Digest,* i, p. 156. The original text is in *A.A.S.,* xxi, p. 490. The relevant part runs: 'Huic Supremae Sacrae Congregationi Sancti Officii proposito dubio: "Utrum licita sit masturbatio directe procurata ut obtineatur sperma, quo contagiosus morbus, *blenorragia,* scientifice detegatur et quantum fieri potest curetur."' Emi ac Revmi DD. Cardinales Inquisitores . . . praehabito RR. PP. Consultorum voto, respondendum esse censuerunt: *Negative.*

question submitted to the Sacred Congregation was : ' Whether direct masturbation is permitted for the purpose of obtaining semen for the scientific detection of the contagious disease " blennorrhagia " and its cure ? ' The reply given was : ' In the negative.' This reply was duly approved and its publication ordered by Pope Pius XL

The second method of obtaining a seminal specimen mentioned by ' Medicus ' is by deliberate withdrawal before semination. This is, as every theologian and moralist knows, the sin of onanism—' natural ' onanism, it is true, and not so grossly immoral as artificial onanism, but none the less a *grave* violation of a negative precept of the natural law and, therefore, intrinsically wrong and never morally justifiable. On this point we may quote a passage from the encyclical on Christian Marriage—issued by Pope Pius XI in December, 1930 : ' But no reason whatever, even the gravest, can make what is intrinsically against nature become conformable with nature and morally good. The act of wedlock is of its very nature designed for the procreation of offspring, and, therefore, those who in performing it deliberately deprive it of its natural power and efficacy, act against nature and do something which is shameful and intrinsically immoral. . . . Wherefore, since there are some who, openly departing from the Christian teaching which has been handed down uninterruptedly from the beginning, have in recent times thought fit solemnly to preach another doctrine concerning this practice, the Catholic Church, to whom God has committed the task of teaching and preserving morals and right conduct in their integrity, standing erect amidst this moral devastation, raises her voice in sign of her divine mission to keep the chastity of the marriage contract unsullied by this ugly stain, and through Our mouth proclaims anew : that any use of matrimony whatsoever in the exercise of which the act is deprived, by human interference, of its natural power to procreate life, is an offence against the law of God and of nature, and that those who commit it are guilty of grave sin.'[1] This solemn and authoritative doctrinal pronouncement is regarded by many writers as an infallible definition. ' In the presence of such language,' writes Vermeersch,[2] ' we cannot doubt that we are confronted with one of those cases . . . where the Pope teaches infallibly a truth already defined and believed by the Church.'

[1] C.T.S. (London) translation (1943), pp. 25-6.
[2] Pamphlet, *What is Marriage?,* p. 38 (English translation).

A final point : we have not any competence to say whether it is true, as it is claimed, that the reprehensible methods mentioned above provide the best specimens for medical examination into the causes of male sterility—but we have seen it stated that adequate medical results are obtained by other means, and hence we may further conclude that these reprehensible methods are not even necessary.

SECTION VII

SEVENTH AND TENTH COMMANDMENTS

THE ABSOLUTE STANDARD OF GRAVE MATTER IN THEFT

During the last few years in Ireland I have heard, at clerical discussions, various estimates of the absolute standard of grave matter in theft. The variety is confusing. It is clearly desirable that confessors should have a fairly uniform standard in this matter. I feel sure that a discussion of this question would help greatly to such uniformity in this country. Will you kindly discuss the question at your earliest convenience ?

Lector.

We arc aware of, and we sympathize with, our correspondent's difficulty regarding the variant estimates of the absolute standard of grave matter in injustice. This difficulty has been felt widely and for a long time. In 1926 Father J. Arendt, S.J., wrote il

Malheureusement, en ce qui concerne la matière absolument grave, les divergences paraissent beaucoup plus importantes et l'accord des théologiens sur cette question semble, surtout depuis la guerre, très difficile à réaliser.

The basic reason for the difficulty is the changing value of money. Nobody is unaware that this value, estimated in terms of purchasing power, has decreased very considerably—but it is difficult to measure the precise extent of the decrease. In the seventeenth and eighteenth centuries there was a high degree of stability in monetary values, in wages and in prices.[2] Consequently, in those centuries, the moralists' estimate, in terms of money, of the absolute standard of grave matter was, on the whole, uniform and fixed. But, in the subsequent period down to the present day, there has been a fairly constant, though not regularly proportioned, downward trend in monetary values—or, alternatively, there has been a continuous appreciation in the cost of living. As early as 1877 Crolly wrote :[3]

1 ' La matière Absolument Grave dans le Vol,' *Nouvelle Revue Théologique,* lui (1926), p. 125.

4 Cf. Arendt, art. cit., p. 131 ; D'Avenel, *Les Enseignements de l'Histoire des Prix,* pp. 93 et seq.

* *De Restitutione,* n. 284.

Dicimus circiter unam libram necessariam et sufficientem esse ad materiam (absolute) gravem.

He notes that some earlier writers like S. Alphonsus laid down ten shillings as the absolute standard and comments :

Iamvero etiam 10 schclingi tempore quo hi auctores scripserunt duabus saltem libris praesenti tempore acquivalerent.

The grave and unpredictable devaluation of money, and the consequent impossibility of laying down a fixed and definite sum as the absolute standard of grave matter, is forcibly demonstrated by the situation in countries like France or Italy.

In countries like Ireland, England, the United States, Switzerland, Belgium, Holland there has not been anything like the same degree of depreciation in the purchasing value of money. But, as we have already remarked, there has been considerable depreciation everywhere.[1] Perhaps, by attempting to measure the extent of the depreciation in Ireland, we can arrive at a reasonable estimate of what should be regarded here to-day as the standard of absolutely grave matter. Some writers,[2]* however, in view of constantly changing monetary values, think that it is vain to seek the absolute standard on these lines alone, and that a more general and more tangible principle should be sought. In dealing with the relative standard many moralists accept the principle that one-seventh of the wage of a worker, who lives solely on his wages, is grave matter.[3] Along similar lines Father Arendt suggests the following general rule for the determination of absolutely grave matter:[4]

La matière absolument grave dans le vol est l'équivalent du revenu hebdomadaire des chefs de famille appartenant aux catégories *les plus favorisées* de la grande masse des citoyens de condition modeste, c'est-à-dire des citoyens de condition modeste *qui vivent principalement de leur travail* en exerçant une profession *d'accis facile* n'exigeant pas d'études moyennes. En d'autres termes c'est l'équivalent du revenu hebdomadaire moyen des bons artisans, des bons ouvriers qualifiés, des bons commis, des petits boutiquiers, qui travaillent assidûment mais n'ont pas de capacité extraordinaire.

It should be possible to combine the two methods of determination, for there is, of course, a close connection between them. One of the regrettable phenomena of modern economic

[1] Cf. Waffelaert, *De Justitia,* ii, n. 215.

[2]* Cf. Arendt, art. cit. [3] Nous pensons qu'il vaudrait bien mieux renoncer complètement aux " barêmes " et à toutes les indications de valeurs exprimées en termes monétaires. Ceux-ci *sontfatalement instables* et obligent les moralistes à des revisions continuelles de leurs évaluations,' p. 127.

[3]• Cf. Davis, *Moral and Pastoral Theology,* ii, pp. 301-2. Prümmer, *Th. Mor.,* ii, 80, prefers the determination of an absolute sum. Cf. St. Alphonsus, *Th. Mor.,* iii, n. 527.

[4] Art. cit., p. 132.

life is that wages seem constantly to be chasing, in a vicious spiral, a rising cost of living. As we noted earlier, Crolly,[1] a recognized authority, writing for Ireland in 1877, maintained that about £1 was absolutely grave matter. By 1914 that standard could reasonably have been increased to nearly £2. In July, 1914, the cost of living index figure was set at 100. On a somewhat similar basis of reckoning that index figure would now stand at over 400.[1] This would lead to the conclusion that £8 to £9 might reasonably be regarded to-day as absolutely grave matter. We reach a somewhat similar sum from the application of Father Arendt's standard of the weekly wage of the more favoured classes of general workers who have no special professional or highly technical training. We think that, in this country to-day, workers of the class envisaged by our author receive a weekly wage of from £8 to £9.

It would be vain to expect that the standard we have suggested for this country would be acceptable to all. We have set it down tentatively, after due consideration of the relevant factors as we see them. We feel that the more general criticism of our view will be that we have set the standard too high. Yet some may consider it too low. The whole question is arguable, and we should like to see further discussion of it. We cannot quote any authorities for the standard we have suggested. The variety of estimates mentioned by our correspondent is a reflex of the statements of the writers. To give a few examples,[3] in 1928 Father Slater wrote:[4] 'Under present circumstances, in civilized countries where similar conditions of commerce prevail, the common opinion of theologians fixes one pound sterling as the absolute sum required for a grave sin of theft;' In 1943, Father Davis[5][6] held that £3 was absolutely grave matter, in the 1958 edition, pp. 302-304, Father Davis sets the absolute standard at about £12. In 1946 Canon Mahoney[8] suggested the sum of £4 as a conservative estimate. A correspondent protested and held that the standard should be £7.[7] In 1945 Father Connell[8] wrote for America: 'To lay down a general norm, in view of actual conditions and value of money,

[1] Loc. cit.
[2] A new basis and method of estimating the cost of living index figure were introduced in Ireland.
[3] Davis, op. cit., pp. 302-4, gives a long and interesting list.
[4] *A Manual of Moral Theology,* i, p. 253.
[5] Op. cit., p. 302, p. 304.
[6] *Clergy Review,* xxvi (1946), p. 430.
[7] Canon Mahoney admits that his view is conservative—cf. ibid n 559
[8] *The American Ecclesiastical Review,* cxii (1945), p. 69.

it would seem that the absolute sum for grave theft would be about 40 dollars.' In 1946 Father Donovan stated:[1] 'It is hard to see how less than a hundred dollars could be absolutely grave, with the chances of a higher amount being probably so.' In Jone-Adelman[2] (1948) the sum suggested is about 50 dollars. As a point of interest we might add that in 1899 Sabetti[3] mentioned the sum of 5 dollars for the United States. In 1919 Barrett[4] (who edited Sabetti) put the absolute standard at 35 dollars. We hope we have not made this variety more confusing by our own tentative suggestion.

DEFINITION OF THEFT. OCCULT COMPENSATION FOR DEBTS OF PIETY.

The following case came up for discussion recently. A wealthy man, after the death of his wife, contracted a second marriage with his housekeeper, to the great disgust of his grown-up daughters. In order to punish them for their rudeness towards their step-mother he cut them off without a penny, and settled *all* his property upon his wife. One of the daughters had managed to get her hands on £300 of her father's money, unknown to him of course, and against his wishes, and now, after his death, she is about to undergo a serious operation and, fearing it may mean the end, she reveals the whole thing and wishes to know if she is strictly bound to restore the £300 to her step-mother. In order to shorten the case it is distinctly stressed that the operation is not of such a nature as to give rise to extreme necessity —in which a thief could keep and consume goods previously stolen ; and it is stated that if the daughter had not taken the money it would now belong to the step-mother.

The solution given was that the daughter can, with a perfectly safe conscience, keep the money. The father was bound in piety to give her this amount, and by cutting her off he violated his obligation of piety. NoIdin's definition of *furtum* was quoted to the effect that for *furtum* the owner must be reasonably unwilling, and that the owner is not reasonably unwilling if he is bound in justice or in *piety* to give or leave the object or amount in question. Hence the daughter did not steal the money and so there is no reason for binding her to restitution.

Against this solution the obvious difficulty is that if the daughter did not steal the money she must have been taking it by way of occult

[1] *The Homiletic and Pastoral Review,* xlvi (1946), p. 694. For comment on this view, cf. Father Kelly, 'Current Theology,' *Theological Studies,* viii (1947), p. 115.
[2] *Moral Theology,* n. 324.
[3] *Comp. Th. Mor.,* n. 404.
[4] Ibid., n. 404.

compensation. Now, Noldin himself, a few pages later, follows the common teaching that one of the conditions for occult compensation is that the debt be real *(verum),* based upon a *strict right* which the creditor actually has to the thing he is about to take. How can we reconcile these two principles, held by the same author, that it is not theft to take from a man that which he is bound in *piety* to give, and that occult compensation may not be made if there is not question of a real debt based upon a *strict right* ? *Or* is it implied that the father's obligation in piety gives rise to a strict right on the part of the daughter ? And why does Noldin make such a clear distinction between piety and charity ? If the owner is unreasonably unwilling when he is bound in piety to give the property, is his attitude not equally unreasonable when he is bound in charity to give ?

Can Noldin's opinion regarding *furtum,* and its application to the present case, be regarded as solidly probable and safe in practice ? And, in case you decide that it is safe, would it make any difference if the daughter took the money only after the father's death, that is when it had already become the property of the step-mother ? In other words, is the step-mother's duty of piety such as to confer Noldin's strict right upon the daughter—or does the father's duty of piety pass on to his wife along with his property ?

Jacobus.

A father is bound by a strict obligation in piety to provide suitably for the necessary sustenance, clothing and education of his children in accordance with their station in life.[1] This obligation, which is expressed in the canon law,[2] and is insisted upon to some extent by the civil law, derives primarily from the natural law so that it can be said that children have certain natural rights against their parents in this matter. These rights, and the parental obligation, remain so long as the children are incapable of suitably maintaining themselves. It follows, then, that a father may be bound by the natural law to provide, by will or otherwise, for the suitable maintenance of his children after his death.[3] They have a natural right also to a reasonable share of the inheritance unless they are legitimately excluded from such a share.[4] Very frequently, a father makes adequate and suitable provision for the welfare

[1] Crolly, *De Restitutione,* n. 359, writes : ' Ex pietate patri incumbit stricta et definita obligatio ea quae ad cibum cultumque necessaria sunt suis filiis praestandi ; et ex justitia commutativa tenetur hanc obligationem in alios, iis invitis, non conjicere.'

[2] Canon 1113.

[3] Noldin, *De Praeceptis,* n. 562. ' Pater iure naturae filiis suis tantum relinquere debet, si quid habet, ut secundum statum suum vivere possint.'

[4] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 370 ; Noldin, op. cit., n. 554; Priimmer, *Th. Mor.,* ii, n. 281 ; Aertnys-Damen, *Th. Mor.,* i, n. 707.

of his children, by giving them an education which enables them to earn their own livelihood according to their station, or by arranging suitable marriages for his daughters.

It is difficult to decide, on the data available to us, whether or not, in the case submitted, the £300 was strictly due in piety to the daughter. There are many details, of which we are unaware, knowledge of which would be necessary for a definite decision. On the one hand, the daughter is grown up and, presumably, was and is being adequately supported in the parental home. The father may have provided very fully for the future of his daughters by giving them a good education. They may be able to earn their own living. It is not clear that the father was bound to leave this daughter £300. This is a fairly considerable sum. It may well be more than a due share of the inheritance—even if there was no cause for disinheriting her. And the father may have had a reasonably serious cause for his action.[1] But, on the other hand, the father may have been a very wealthy man from whose estate £300 would be a relatively small deduction, and a reasonable or even a relatively small share of the inheritance. And he may not have given his daughters the education and opportunity to which they were justly entitled, and by which they could now earn a living, more or less in accordance with their station. The phrase 'rudeness to their stepmother' is very wide and indefinite. It is capable of many different interpretations which would vary considerably in their gravity. But, taking it in its usual sense, it could hardly be described as constituting a reasonably serious cause for completely disinheriting the daughters. Since we have not sufficient information on these various points we cannot give any definite judgment in regard to the sum due in piety to the daughter. Speaking generally, we would say that the presumption is that the sum of £300 was not due. But the solution given by one, who probably knew facts of which we are unaware, was that this sum was a debt of piety. That solution, if it were based on fuller knowledge, tells against our presumption. It seems to us that our correspondent is really less interested in the actual solution of the case than in the justification of the principles underlying the favourable solution given. Accordingly, as we cannot give a definite decision on the actual case, we shall consider the situation, and the obligations, of the daughter in each of two possible hypotheses, namely, in

[1] Ibid.

the hypothesis that the sum in question was not due in piety, and in the hypothesis that it was.

If the sum was not due in piety, then the girl was not justified in taking it. Nor is she justified in retaining it unless she can reasonably presume that the father may have condoned the debt before his death, or that her step-mother has since condoned it.[1] The girl is not in extreme need. Apart, then, from presumed condonation—and the presumption must be reasonable, must take account of all the circumstances—the girl is bound, in this first hypothesis, to make restitution to her step-mother.

If the sum of £300 was strictly due in piety, then the father was not reasonably unwilling that it should have been taken. The taking of it was not theft objectively, and the daughter is not bound to make restitution.

Quamvis pictas nullum strictum ius ad rem gignat, efficit tamen ut *qui sumat sibi debitum ex pietate,* quod secus non solveretur, violatae iustitiae argui nequeat, cum dominus rationabiliter invitus esse non possit.

We may note here in passing that the reason why theologians frequently do not bind children to restore parental property, secretly taken, is not because the taking of it was not theft, but because, in the circumstances, condonation may often be presumed.[3]

Our correspondent raises the difficulty that, if, in the case before us, the taking of £300 was not theft, it must have been taken by way of occult compensation—and theologians do not allow occult compensation for debts of piety. Though the taking of the sum of money by the daughter is not precisely a case of occult compensation, it is so nearly such that the difficulty raised is amply justified. It is perfectly true that the vast majority of theologians lay down as one of the conditions for occult compensation that the debt for which compensation is thus made must be a debt of strict justice.[4] We know of only one theologian who expressly holds that one may occultly compensate oneself for a debt of piety. This theologian is Ferreres, who states the first condition for occult compensation thus :[6]

Ut agatur de debito e stricta justitia vel pietate, non autem ex mera congruentia vel mera fidelitate.

[1] Cf. Prümmer, op. cit., n. 241.
[2] Vermeersch, *Th. Mor.,* ii, n. 374 ; cf. Prümmer, op. cit., n. 78 ; Noldin, op. cit., n. 414.
[3] Jorio, *Th. Mor.,* ii, n. 761.
[4] Cf. Prümmer, op. cit., ii, nn. 88, 89 ; Noldin, op. cit., n. 427 ; Aertnys-Damen, op. cit., i, n. 731.
[5] *Th. Mor.,* i, n. 758.

But it must be remembered that the conditions laid down for occult compensation arc principally conditions which determine its lawful use and not, so to speak, its validity. Thus, for instance, it is stated that a person may not occultly compensate himself, even for a debt in strict justice, if there are other available means of recovering the debt. If a creditor ignores this condition and, without considering any other means, simply avails himself of the first opportunity to indemnify himself secretly for a debt really due—it cannot be said that he has been guilty of theft and is bound to restitution. Yet he acted wrongly; he was not entitled to compensate himself occultly. Somewhat similarly, it seems to us, when a debt is really due to one in piety, to take it is not theft for such a one, because the owner cannot be reasonably unwilling—yet it is unlawful to compensate oneself occultly for this debt. This, possibly, is what writers have in mind when they speak of a father being really unwilling in regard to the manner in which his children take property rather than in regard to the property taken. To quote Crolly again [1]

Tenetur pater saltem ex pietate, solo jure naturali spectato, ea quae secundum suam conditionem liberis ad victum cultumque necessaria sunt suppeditare, atque ideo plerumque supponi potest eum non esse graviter invitum circa *rem* sed ad summum circa *modum* quum haec eo inscio auferuntur.

Theologians look upon occult compensation with a certain degree of suspicious fear.[2] They know that it is fraught with danger; that it is very liable to grave abuse. They try to protect it from such abuse by hedging it round with safeguards, by laying down various conditions under which alone it may lawfully be used. In particular they restrict the sphere in which it may be applied to debts of strict justice because the limits of such debts are, in the majority of cases, exacdy defined. In strict justice there must be absolute equality—the *medium rei* as well as the *medium rationis* common to all the moral virtues.[3] If A owes, in strict justice, a debt of £10 to B—then B has a strict right to £10, to no more and to no less. Consequently, though, in occult compensation, the creditor is, to a certain extent, judge in his own case, the danger of abuse is greatly lessened by the fact that he may not, in conscience, take one jot or tittle beyond the measure due to him in strict justice.

Some other theologians, in dealing with the question of

[1] Op. cit., n. 359.
[2] Cf. Merkelbach, *Th. Mor.*, ii, nn. 413–415.
[3] Cf. Prümmer, op. cit., i, n. 463.

theft, make the same distinction as Noldin between what we may call debts of piety and obligations of other virtues like charity and fidelity.[1] They grant a privileged position to debts of piety and almost equate them with those of justice. The reason is that there is a close kinship between the virtue of justice and the virtue of piety. In both there is the *ratio debiti*. The obligation in piety on the part of the parent begets a definite right in the child. Some would even say that it begets a strict right. A person in extreme need, they say, has a strict right to what is necessary to relieve that need—though the owner of the property is bound only in charity to help the needy person. Correspondingly, it is thought that the obligation in piety on the part of the parent may be paralleled by a strict right in the child. This comparison does not stand close examination. In the case of extreme need, the strict right of the necessitous person does not derive from the obligation in charity of the property owner, but from the natural purpose of property.[2] Whereas in the other case the child's right is the outcome of the parent's obligation in piety. It is more usual, and more correct, to reserve the term 'strict right' *(sine addito)* to describe a right based on strict justice. 'Quamvis pictas nullum strictum ius ad rem gignat . . .' as Vermeersch has it.[3] At the same time we may speak of piety begetting a right which is very analogous to a strict right. There is a certain justice-like definiteness about the extent of right in piety—a definiteness which does not exist in regard to the obligations of other virtues, even of the other potential parts of justice.

Jus quod *pietate* nititur longe strictior est ea quae in *caritate* fundatur, hoc enim plerumque indeterminatum est tum circa res, tum circa personas; jus vero quod in pietate nititur omnino determinatum est circa personas, et etiam circa res, non quidem secundum proportionem arithmeticam, sed secundum communem prudentium aestimationem.[4]*

In the hypothesis with which we are dealing now—namely that the sum of £300 was strictly due in piety—we think that the daughter would be entitled to that sum even after the death of the father. He had, *ex hypothesi,* a serious obligation to provide for her.[6] In the nature of things parental property

[1] Cf. Priimmer, op. cit., ii, n. 78; Merkelbach, op. cit., n. 403.
[2] In extrema necessitate omnia bona terrestria hunt iterum communia. Deus enim dedit terram inhabitandam et bona fruenda omnibus hominibus,' Priimmer, op. cit., ii, n. 86.
[3] Loc. cit.
[4] Crolly, op. cit., n. 359.
[6] 'Ex ipso iure naturali testator tenetur filus . . . convenientem partem fortunae relinquere,' Priimmer, op. cit., ii, ŋ. 2B1.

is destined for the suitable maintenance of the family now, and for reasonable provision for it in the future.[1] The family is a social and economic unit. On these natural facts hinge the continental legislation regarding necessary heirs and our own legislation regarding intestate succession. The decent upkeep of the family is the primary charge on parental property or on parental wages. It is only when parental property is incapable of meeting this charge that it can be passed on as an obligation to others.[2] So we conclude that the right of the daughter would pass on with the property. *Ex hypothesi* the father did not discharge his obligation to his daughters.[2] They have been unjustly excluded. The step-mother now stands *in loco parentis,* and, though there is not between her and the daughters of her late husband a relationship of origin, there is no doubt that she would be bound to maintain them out of the ample property she has received from their father. And this obligation, as we have said, has a corresponding right. It has been noted that theologians generally[4] hold that the obligation in religion of canon 1473, which binds clerics to distribute their superfluous goods to the poor or to pious causes, does not pass on to heirs who inherit such goods. In other words, the obligation of canon 1473 is held to be a personal, not a real, obligation—and it is asked why, then, should an obligation in piety (such as is being considered in this question) be held to be real and to pass to the heirs? In describing the purpose of parental property we have, we think, replied by anticipation to that question. The function of parental property seems to be different from that of *bona superflua.*

Si bona parentum ad liberos non transirent, proprietas, quae juris naturae est, vix ullius valons esset. Proinde etiam jure naturali vetantur exhaeredare liberos suos sine justa causa quae vere gravis sit oportet.[5]

THE FAMILY WAGE AND STRICT JUSTICE

At a recent gathering of priests a discussion arose as to whether a family wage is due to a workman in strict justice according to the principles enunciated in the Encyclicals *Rerum Novarum* and *Quadragesimo Anno.* Some held that while a family wage was advocated in

[1] Cf. Meyer, *Institutiones Juris Naturalis,* ii, n. 203 et seq.; Priimmer, loc. cit.
[2] *Cf.* Crolly, loc. cit.
[3] Cf. St. Thomas, *In Sent., iv,* d. 33, q. 2, a. 2.
[4] Cf. Noldin, op. cit., n. 783.
[5] Aertnys-Damen, op. cit., n. 707. Cf. Noldin, op. cit., n. 554: 'Familiarum autem conservatio et propagatio impossibilis esset, nisi bona familiae saltem quoad maximam partem ab una generatione ad alteram transmitterentur.'

Rerum Novarum it was not regarded as due in strict justice by Pope Leo. The advocates of this view maintained that *Quadragesimo Anno* was more precise and declared a family wage to be due in strict justice. Others contended that, according to the teaching of the Encyclicals, a family wage, whilst it is strongly advocated, is not due in strict justice, but only in legal justice. Theologians were cited in favour of both sides. Would you kindly discuss the whole question?

Dubius.

The opinions expressed at the clerical gathering, as described by 'Dubius,' reflect in the main the variant views of writers on the question at issue. It is not surprising, therefore, that authorities were invoked in favour of the different opinions. Some sociologists and theologians maintain that the obligation of paying a family wage to the workingman for his labour derives from legal or social justice.[1] Others go further and hold that this wage is demanded, not merely by social justice, but by strict or commutative justice.[2] It is claimed by each group that the teaching of the Encyclicals favours its own view. From which claim it may be said to follow that the Encyclicals are not absolutely clear and decisive on the point. If they were, there would no longer be room for divergent opinions, on this matter, among Catholic writers. Not, indeed, that this divergence is in practice so very great, when we analyse it closely. And it should not be emphasized disproportionately, as if to imply almost that some Catholic writers deny that a family wage is due to the workingman as a reward for his labour. There is general agreement that a family wage is due to the worker at least in social justice. And it must not be forgotten that social justice begets a grave obligation in conscience when the matter is grave—though its violation does not involve the further obligation of restitution. When it is said that the obligation of paying a family wage arises only from social justice, it is implied that the work done by the labourer has not, of itself, a family value, a value strictly equivalent to a family wage—but that, nevertheless, the common good of society demands that this wage be paid. On the other hand, those who say that a family wage is due in strict justice contend that the labour of the averagely capable workingman has a value which is the strict equivalent, not merely of his reasonable individual needs, but also of the frugal needs of his family.[3]

[1] Cf. Arregui, Ferrcres, Sabetti-Barrett, Jorio, Priimmer, Genicot (in earlier editions).

[2] Vermeersch, Noldin, Wouters, Merkelbach, Tanquerey, Cronin

[3] Cf. Cronin, *The Science of Ethics,* vol. ii, pp. 347 et seq.

In other words, the labour of the worker has, of itself or intrinsically, a family value. Normally, then, it is concluded by the advocates of this view, there is a grave obligation to pay a family wage; and restitution must be made if this obligation has not been discharged.

By a family wage, in this context, Catholic writers generally mean an absolute, not a relative, family wage'—that is to say, a wage, paid to the worker for his labour, which takes account only of normal circumstances. It is then a wage which is sufficient to maintain in frugal but decent comfort an average-sized family—due regard having been had for contributions from other sources, in particular for earnings received from suitable employment by other members of the family. [1] It is right, indeed, that the rest of the family contribute according to their power towards the common maintenance. . . . But it is wrong to abuse the tender years of children or the weakness of women.'[2] A relative family wage is one which takes account of the exact number of children and any abnormal circumstances in which a particular family may have to live. The absolute family wage is set down as being, in normal circumstances, a *minimum* just wage for an able-bodied adult worker who gives his whole labour day to his employer.[3]

We have remarked that the Encyclicals are invoked in favour of the two opinions mentioned above. A French writer[4] puts the following question:

> A quel titre ce salaire familial est-il dû? Au nom de la justice commutative ou de la justice sociale?

He quotes in reply[5] 'to this delicate question' from a commentary on the Encyclical *Quadragesimo Anno:*

> Les théologiens et les sociologues se partagent sur cette question. Les deux Encycliques tranchent-elles la controverse? Elles déclarent bien que le salaire familial doit être payé et qu'il doit être payé au titre de la justice sociale. Elles inclinent—mais sans se prononcer formellement—vers l'opinion prétendant que le salaire familial s'impose d'abord en vertu de la justice commutative.

It may be well to recall here the passages in the different Encyclicals which refer to the question of the just wage. Pope Leo XIII, in his Encyclical *Rerum Novarum,* does not formally raise the question of the obligation of paying a family wage,[6]

[1] Cf. Cronin, op. cit., 350; Jorio, *Th. Mor.,* ii, n. 970; Noldin, *De Praeceptu,* n. 610.
[2] *Quadragesimo Anno,* English translation (C.T.S.), p. 32.
[3] Cf. Cronin, op. cit., p. 349.
[4] A. Muller, S.J., *Notes d'Economie Politique.*
[5] This commentary appeared in *L'Action Populaire.*
[6] Cf. Genicot, *Th. Mor.,* i, 647; Cronin, *Primer of Social Science,* p. 82.

and, consequently, it cannot be said that he pronounced explicitly on the nature of that obligation. Having emphasized the personal and the necessary character of human labour the Pope enunciated his famous principle :[1] 'Let the working man and the employer make free agreements, and in particular let them agree freely as to wages, nevertheless, there underlies a dictate of natural justice more imperious and ancient than any bargain between man and man, namely, that wages ought not to be insufficient to support a frugal and well-behaved wage-earner.' It has been said, and rightly we think, that there are indications in the *Rerum Novarum* that the minimum just wage is a family wage. In a subsequent passage to that just quoted we read : 'If a workman's wages be sufficient to enable him comfortably to support himself, his wife and his children, he will find it easy, if he be a sensible man, to practise thrift.' There are also indications, however, that Pope Leo did not intend to teach that there is an obligation in strict justice to pay a family wage. These indications are to be found in a reply of Cardinal Zigliara to a doubt, proposed by Cardinal Goossens, in regard to the teaching of the Encyclical on the question of wages. It was asked whether an employer would sin if he paid an individual living wage—but not a family wage. And the reply was :

Non peccabit contra iustitiam, poterit tamen quandoque peccare vel contra caritatem vel contra naturalem honestatem.*

In 1930 Pope Pius XI issued his Encyclical on Christian marriage, in which he wrote :[3] 'And so, in the first place, every effort must be made to bring about that which Our predecessor, Leo XIII of happy memory, has already insisted upon, namely, that in the State such economic and social methods should be adopted as will enable every head of a family to earn as much as, according to his station in life, is necessary for himself, his wife and for the rearing of his children, for 'the labourer is worthy of his hire.' To deny this or to make light of what is equitable is a grave injustice, and is placed among the greatest sins by Holy Writ ; nor is it lawful to fix such a scanty wage as will be insufficient for the upkeep of the family in the circumstances in which it is placed.' From that passage it is obvious that the Pope taught that a family

[1] English translation (C.S.G.), p. 39.

[2] Cf. Prtimmer, *Th. Mor.*, ii, n. 312. In a footnote to the preceding number Priimmer quotes more fully the text of Cardinal Zigliara's reply; cf. also Jorio, op. cit., n. 971.

*English translation (C.T.S.), p. 60.

wage is due to the worker, but it is not clearly stated that this wage is due in strict justice. Some writers, while admitting that there is not a clear statement, claim that this debt of strict justice is strongly insinuated.[1] It must be remarked, however, that the insinuation is less strong in the Latin text of the Encyclical.[2]

In the encyclical *Quadragesimo Anno* it is again clearly stated that the minimum just wage is a family wage. 'In the first place the wage paid to the workingman must be sufficient for the support of himself and of his family.' But we are not told that the family wage is due in strict justice. There is no pronouncement in the text or context as to the precise source of the obligation of paying a family wage. Vermeersch admits this when he writes[3] as a commentary on the passage quoted : 'quonam autem titulo merces talis debeatur, id silentio premitur.' In a later passage in the encyclical, a relevant reference to social justice is invoked to support the view that the obligation of paying a family wage derives from social justice only. [4] Every effort must therefore be made that fathers of families receive a wage sufficient to meet adequately ordinary domestic needs. If in the present state of society this is not always feasible, social justice demands that reforms be introduced without delay which will guarantee every adult workingman just such a wage.'[4]* But this reference to reforms demanded by social justice by no means precludes the view that the family wage is due in strict justice. Social justice might well demand reforms so that a wage due in strict justice could be paid.[6]

There are some references to the just wage in the encyclical *Divini Redemptoris.* In one passage Pope Pius XI recalls the teaching of his earlier encyclicals on the Social Order in which were explained clearly 'the right and dignity of labour, the relations of mutual aid and collaboration which should exist between those who possess capital and those who work, the salary due in strict justice *[ex districta iuslitid)* to the worker for himself and for his family.'[6] The phrase 'quae ex districta iustitia debetur' is taken by many writers as covering not merely obligations in commutative justice but also obligations

[1] Vermeersch, *What is Marriage ?* English translation, p. 73 ; Ryan, *American Ecclesiastical Review,* 1931, pp. 269, 270.
[2] Vermeersch, loc. cit. ; Jorio, loc. cit.
[3] *Periodica* (1931), p. 67 ; cf. p. 237.
[4] Loc. sit. p. 53.
[5] Cf. *infra.*
[6] English translation (C.T.S.I.), p. 15.

in social justice.[1] And these writers claim that their interpretation is confirmed by a subsequent passage in the encyclical where the Pope deals formally with duties imposed by social as distinct from commutative, justice. 'In reality, besides commutative justice, there is also social justice, with its own set of obligations, from which neither employers nor workingmen can escape. . . . But social justice cannot be said to have been satisfied as long as workingmen are denied a salary that will enable them to procure proper sustenance for themselves and for their families.'[2]

We have given above the principal relevant texts from the encyclicals, and it seems fair to conclude that, whatever they may insinuate, in none of them do we find a definite indisputable statement that a family living wage is the minimum due in strict justice to the worker. But, the teaching of the encyclicals apart, it is claimed that the worker's right in strict justice to a family wage can be proven by independent arguments.[3] The right of the labourer, in strict justice, to an individual living wage, as a minimum, is established by a consideration of the intrinsic nature, purpose and value of human labour. From this consideration it is seen that there is, in the nature of things, at least a strict equivalence between the value of an average man's labour for a day and what is necessary to supply him for a day with the essentials of human life. This same argument is pressed into service to show that a family wage, in the sense explained, is due in strict justice? 'The natural function or end of the energies utilized in human labour is the supplying of one's human needs. But equally natural and imperative with the need of food and clothes and housing is the need which a father is under to support his children. It is, first, a need which a man is bound by natural moral law and obligation to fulfil. It is, secondly, a need which he is, as it were, physically compelled to fulfil, which every instinct of his nature impels him to fulfil. A father is, in the first place, bound by natural law to labour for the support of his children. *The capitalist, therefore, who monopolizes all that father's labour, is bound by this same natural law to pay a wage which will admit of the fulfilment of this obligation.* In the second place, as we said, the father not only ought to

1 Cf. Jorio, loc. cit.

2 Loc. sit., p. 24.

3 Cf. Cronin, *Science of Ethics,* ii, pp. 348, 349 ; Merkelbach, Th. *Mor.,* ii n. 553 et seq.; Noldin, loc. cit.

4 Of which Genicot says : 'Perperam vero idem ratiocinium applicetur officio quod patrifamilias incumbit alendi uxorem et liberos' ; loc. cit.

support his children, but *must* do so, is impelled, by *natural* instinctive love, to do so—he cannot help sharing with his children that of which he is in possession, and, therefore, to pay him a wage sufficient for his own personal support only, is to pay him a wage *insufficient even for himself* since part of that wage will go to his children under the operation of natural forces and instincts stronger than any external compulsion.'[1]

The foregoing argument is suasive and appeals to us in many ways. But, prescinding from the difficulty of proving beyond doubt that a man's labour has intrinsically a family value, we see two further difficulties in the argument when it is examined in the light of the common teaching on the question at issue. Logically the argument should lead, we think, to the conclusion that there is an obligation in strict justice to pay not merely an absolute but a relative family wage. The extra children, in a larger than average family, will equally demand a share, and have an equal right, with the other members of the family, to a share in the father's wages. It is beside our present point to raise any objection to the above conclusion. Nor do we wish to do so. We merely want to state that the conclusion is not generally accepted by those who use the argument.[2] Again, it is maintained that the family wage is due in strict justice, because there is a strict equivalence between the value of the work done by the labourer and the cost of upkeep of his family. This family wage is held to be a minimum.[3] It is not easy to see, if the minimum is based on strict equivalence, how there is any further title in strict justice for variations in wages, in an ascending scale, from this minimum.

Another argument that is advanced in favour of the view that the family wage is due in strict justice is derived from common estimation.[4] It is pointed out that the common estimation of those concerned is a primary factor in determining the just price in a free market. And it is contended that the common estimation of workers is in favour of, in fact demands, a family wage as due in strict justice. A wage that

[1] Cronin, loc. cit.; cf. Merkelbach, op. cit., n. 553, a. 'Labor praestitus non est labor unius hominis abstracte et stricte individualiter sumpti, sed est labor hominis prout de facto existit in concreto et existere debet iuxta generalem ordinationem naturae legemque moralem, uno verbo est labor opificis patrisfamilias. Ergo salarium sufficere debet subveniendae conditioni patrisfamilias.'—Merkelbach only quotes this argument. He does not base the case for the obligation in strict justice of the family wage on it.

[2] Cronin, op. cit., p. 350; Noldin, loc. cit.

[3] Cf. Muller, loc. cit., and other authors cited above.

[4] Cronin, loc. cit.

is insufficient to support a wife and family is openly proclaimed as unjust by the workers—and employers do not demur. The workers feel that they have a strict right to a family wage. If they work for a less wage it is because they are compelled by necessity, not because they have renounced their right to the greater wage. Merkelbach writes :[1]

Hinc aestimatio communis in determinando pretio laboris huic attendere debet : opifices scii, gcncratim, ad ofiicium erga familiam implendum, non aliud praeter laborem habere medium, quod non intendunt locare nisi pro salario familiali ; unde in statu normali ordinis oeconomici aestimatio communis salarium familiale tamquam minimum habebit. Et tunc illud iam debetur ex *iustitia ammulativa,* quia ordinario operarii non habent intentionem huic salario renuntiandi imo nec etiam renuntiare possunt, et domini non possunt operarios impedire ut isto solo medio utantur ad ofiicium erga familiam implendum. Ac proinde si domini mediis iniustis cogant operarios, vel eorum necessitate abutantur aut operariorum abundantia, ut salarium minus imponant, peccant contra iustitiam commutativam, quia impediunt opifices ne ius suum exerceant.

We think that this argument, based on the general condition and intentions of the workers, is of greater force than that based upon the intrinsic value of human labour.[1] In other words, in estimating the minimum just wage, the social as well as the individual character of labour must be considered. Pope Pius XI stressed this point in the following passage.[3] ' The obvious truth is that in labour, especially hired labour, as in ownership, there is a social as well as a personal or individual aspect to be considered. For unless human society forms a truly social and organic body, unless labour be protected in the social and juridical order, unless the various forms of human endeavour, dependent upon one another, are united in mutual harmony and mutual support, unless above all, brains, capital and labour combine together for common effort, man's toil cannot produce due fruit. Hence if the social and individual character of labour be overlooked, it can be neither equitably appraised nor properly recompensed according to strict justice.' The Latin original of this last sentence is clearer and more expressive. It reads :

Haec (efficientia hominum) ergo nec iuste aestimari neque ad aequalitatem rependi poterit, eius natura sociali et individual! posthabita.

1 Op. cit., n. 554.

2 Cf. Genicot, loc. cit.; Jorio, op. cit., nn. 971, 972. Mulier, loc. cit. writes : ' On ne doit pas concevoir le salaire familial que nous réclamons pour tous les ouvriers . . . comme équivalent strictement aux frais d'entretien d'une famille normale pleinement constituée.'

3 *Quadragesimo Anno,* p. 32.

We have outlined the principal views advanced in regard to the obligation of paying a family wage, as a minimum just wage, and we have discussed some of the arguments used. Considerations of space prevent us from going into the question more fully. But 'Dubius' may well ask what conclusion follows from our discussion? We have stressed the social aspect of human labour because, it must be remembered, we have had in mind, in all this discussion, the propertyless labourer who depends entirely upon his wages for the support of himself and his family. And it seems to us that it is the function of *social justice* to determine what amount of wages must be paid by the employer in order to maintain this labourer and his family in frugal comfort, and that, *per se,* the employer is bound in *commutative justice* to pay the amount thus determined. Merkelbach concludes his discussion of this question on somewhat similar lines. He writes :[1]

In praxi conveniunt catholici omnes salarium familiale ad bonum societatis totius esse maximopere optandum et quovis honesto modo procurandum ... ; item in omni societate Christiana iustitiae legibus obtemperante neque universali inopia laborante, de facto existere salarium familiale per aestimationem communem spontaneo herorum et operariorum consensu ; quod ubi in usum communem devenit, salarium familiale iuxta omnes etiam ex iustitia commutativa tribui debet, nisi quLs ob particulares rationes ab hac obligatione excusetur. »

OCCULT COMPENSATION FOR AN UNJUST WAGE

Will you kindly discuss the following case ?

Petrus is a country agent for an Insurance Company. He devotes his whole time and energies to extending the Company's business. He travels long distances by bicycle. He has been very successful. As a result of his efforts, innumerable policies, of one kind or another, have come the way of the Company for which he works. And yet, tell it not in Gath, Petrus receives only a miserable remuneration—one which is certainly far below a living wage. On several occasions he has appealed, without success, for an increase of salary. He continues to act as agent for this Company because he can get no other suitable employment. He devoted special energy to his work, partly because he is interested in insurance, but more particularly because he had hoped that the Company might one day recognize the good work he had done and, repenting of its previous hardness, would compensate him generously. Of late he has become less hopeful and more cynical. And some time ago he evolved a very elaborate system —fool-proof he thinks—whereby he can appropriate to his own use

[1] Op. cit., n. 554, 5°; Cf. Gcnicot, loc. cit.

[2] A number of excusing causes are recognized. That is why we wrote above that the employer is bound, *per se,* in commutative justice.

part *of* the money received in payment of premiums (fairly large sums pass through his hands in this way). Recently, too, he has faked a bill of expenses amounting to £10 odd—which the Company reluctantly paid. He has done all this, he says, to make up for the injustice and inadequacy of his wages.

Yet Petrus is conscientious after a fashion. He is, at all events, uneasy about his actions and he has asked a priest (1) if he may retain what he has taken to supplement his meagre salary ? (2) if he may continue for the future similarly to supplement what he receives from the Company to the amount of a minimum living wage ? What replies should the priest have given him ? The questions were asked outside confession.

Amator Justitiae.

Our correspondent does not tell us whether or not Petrus is a whole-time employee of the Insurance Company.' We understand that insurance agents often are only part-time. In other words, the agency may be a side issue, a supplementary or, at most, only a partial source of livelihood. The evidence in this case shows clearly that Petrus has been acting as a whole-time employee—devoting all his energies to the furtherance of the interests of the Company. Yet this may be a purely voluntary activity on his part, undertaken because he is interested in insurance work, and because he is, or was, hopeful that, one day, he would be rewarded suitably for his voluntary service. It may be then that the Company has employed Petrus on a part-time basis, leaving him perfectly free to spend the rest of his working time in the employment of others, or in any remunerative occupation. The point is important. It makes a considerable difference whether Petrus is a whole-time or part-time employee. Naturally, an employer who claims and utilizes the energies of an employee during only part of the working day cannot be obliged to pay a living family wage in the same way as the employer who monopolizes the whole working day of the employee is obliged to pay such a wage.[1]

But since Petrus actually works whole-time, let us suppose firstly that he has been employed by the Company as a whole-time agent. As such, a living wage is due to him in strict justice.[2] And we are assured, on the word of our correspondent, that the salary he receives is considerably less than a living

[1] Cf. Cronin, *Science of Ethics,* ii, pp. 348, 349 ; Muller, *Notes d'Economu Politique,* p. 200 et seq.

[2] We need not discuss here whether the living wage due in strict justice is a family wage.

wage. It would follow then, in the supposition which we have made, that Petrus is being unjustly treated by his employers. And the question, in effect is : may Petrus compensate himself occultly for this injustice ?

Our readers are familiar with the conditions required in order that occult compensation be justified.[1] Briefly, one may take secretly from another that to which one has a strict and certain right, provided the debt cannot be recovered otherwise,[2] and provided there docs not ensue to the debtor damage over and above the debt, or damage to a third party. In the case we are considering, again in the supposition that the agency is a whole-time position, a living wage is certainly due to Petrus, and in strict justice. It is equally certain, on the evidence of our correspondent, that this wage is not being paid. Moreover, in the circumstances, there seem to be no public (non-occult) means available whereby Petrus can have the injustice repaired. Law courts would avail him nothing—unless the Company had formally contracted to pay him a higher wage. In any case, Petrus could hardly afford legal expenses ; nor can he risk incurring the displeasure of his employers.[3] Normally, the last condition mentioned—namely, that, by reason of the occult compensation, undue injury should not result to the debtor or to a third party—binds only in charity.[4] The person who occultly compensates himself must avoid any such injury as far as may be possible.[6] But the manner in which the facts of this particular case are narrated suggests to us that, possibly, the course of action determined upon by Petrus may directly injure the policy holders. We are not told the nature of the ' fool-proof' system which Petrus has elaborated to indemnify himself. It is only indicated that, by means of it, he can appropriate to his own use part of the premiums paid by the policy holders. It may be that the system implies that the insured are deceived by Petrus as to the true value of the policies they hold, or as to the correct amounts of their premiums. Such deception would be unjust to the policy holders, and the procedure could not be justified

[1] Cf. Jorio, *Th. Mor.,* ii, n. 676 ; Noldin, *Th. Mor.,* ii, n. 426 ; Merkelbach, *Th. Mor.,* ii, nn. 413-6 ; Priimmer, *Th. Mor.,* ii, nn. 88-90.

[2] This condition often binds only *sub levi* (cf. Priimmer, loc. cit.) nor does it bind in commutative justice. Cf. Davis, *Moral and Pastoral Theology,* ii, p. 312.

[3] In other words it would be morally impossible for him to recover the debt by public means.

[4] Cf. Merkelbach, op. cit., n. 415.

[5] Priimmer, loc. cit., writes : ' Patet occultum compensatorem debere haec damna cavere in quantum est possibile. Hoc enim exigit čaritas.

by the fact that Petrus docs not receive a just wage from the Insurance Company. Obviously, his right to compensate himself, if it be seen to exist, may be exercised only against the Company, and not directly against the policy holders. But, on the other hand, the plan evolved by Petrus may secure the withholding of the sum due by the Company without interfering unjustly with the right of the policy holders. If this latter be the fact, then all the conditions required for occult compensation arc verified and, theoretically speaking at least, Petrus may lawfully supplement his meagre wage in this manner. In practice,[1] however, one should hardly ever recommend an employee to supplement inadequate wages by occult compensation—even when theoretically the circumstances warrant such indemnification. Because, for one thing, it is difficult to decide what exact amount of injustice is being done in any particular case.[2] And, moreover, to allow the employee to decide this difficult question for himself is to set him up as judge in his own case—a procedure which, in the circumstances, leaves considerable room for self-deception.[3]* For these, among other reasons, Pope Innocent XI condemned the following proposition :

Famuli ct famulae domesticae possunt occulte heris suis surriperc ad compensandam operam suam, quam maiorem judicant salario quod recipiunt.·

Supposing, then, that the requisite conditions for occult compensation are present in this case, what is to be said in reply to the specific questions asked by Petrus ? He should be told, we think, that he is not obliged to restore any of the amounts he has appropriated up to the present[6]—unless, and this seems very unlikely, taking these amounts into account, Petrus has received, averaging over the period of his employment, more than a just wage from the Company. In regard to the future, though there is clear injustice, Petrus should be exhorted to discontinue his practice of compensating himself occultly by falsifying his returns to the Company. This practice is a serious violation of the civil law,[6] and Petrus,

[1] Cf. Jorio, op. cit., n. 676 ; Noldin, op. cit., n. 428.

[2] Cf. Davis, ioc. cit.

[3] Cf. Jorio, loc. cit.

[4] Denz. 1187. The proposition was condemned as *scandalosa et in praxi perniciosa.* Cf. S. Alph., *Th. Mor.,* l. 3, nn. 522-4 ; Lehmkuhl, *Th. Mor.,* i, n. 1126. Noldin writes, loc. cit., ' Propositio non quameumque compensationem famulorum prohibet : propositio enim damnata fuit quia nimis vaga et indeterminata est.' Cf. Crolly, *De Restitutione,* nn. 405 et seq.

[6] Cf. Davis, loc. cit.

[6] Priimmer, loc. cit., writes : ' Raro exercenda est occulta compensatio ... : rarius consulenda est a confessario, nam ipsa quamvis licita in bono conscientiae non solet agnosci in foro civili sed tamquam furtum punitur.'

if discovered, will be liable to severe penalties. This is an important consideration, for it should be remembered that very few systems are absolutely fool-proof. We are well aware that the situation in which an employee like Petrus finds himself is very difficult. His case should evoke the sympathy of all 'lovers of justice.' He is giving good whole-time service to his Company, and, in return, he receives a miserable pittance. Cynicism would not be unintelligible in such circumstances. We do not know if the case sent by our correspondent is one which has actually occurred. It would seem that it is. If such cases do occur, we condemn most emphatically the conduct of the Company responsible—a company which, very probably, shows large profits and pays good dividends, yet forces its employee to live in misery and penury. Such conduct would stand out as heinously unjust and intolerable. There is no denying of that fact and there should be no concealing of it in Gath of the Philistines or elsewhere—even though, like the death of Saul, it will be accounted as good news for some and as bad news for others. The conduct of the Insurance Company in regard to Petrus is not merely grossly unjust, but it seems very foolish and short-sighted, too.[1] How, in the name of ordinary common-sense, can any fairly prosperous company—or private employer, for that matter—expect honest, whole-hearted service from discontented and badly underpaid employees? In these circumstances the temptation to shirk work and to disregard the employer's interests will be very strong, as will the temptation to defraud the Company in every way possible. Many people are righdy appalled by the frequent occurrence nowadays of acts of peculation or misappropriation of the funds of companies and other public bodies. And, of course, it must be insisted that such acts are serious violations of the moral law, violations of strict justice. It must be insisted that companies, public bodies, the State itself and the Church have strict rights—no less than individuals —to their respective property.[2] The moral obligation to respect these rights, to avoid injury to public property, to give decent honest service to public bodies—

[1] This conduct is a far cry from that recommended by Pope Pius XI when he wrote: 'In the present state of human society We deem it advisable that the wage contract should, when possible, be modified somewhat by a contract of partnership, as is already being tried in various ways to the no small gain both of the wage-earners and of the employers. In this way, wage-earners are made sharers in some sort in the ownership, or the management, or the profits' (*Quad. Anno*, p. 31, C.T.S. translation).

[2] Cf. Prümmer, op. cit., n. 14.

as well as to individual employers—cannot be insisted upon too much to-day. The changes might well and profitably be rung upon that theme. At the same time we cannot help thinking that the blame for some of the acts of embezzlement, of which we hear so frequently nowadays, rests in no small degree, in the ultimate analysis, upon the companies or public bodies themselves; that these acts arc often made possible, even provoked, by the failure of the responsible directors or executives to supervise adequately' the finances and accounts, or to provide adequate supervision, and sometimes by their failure to pay, when they can well afford them, decent and, if we may coin a word, honest-making wages to their employees.

Thus far in our reply we have assumed, as we indicated earlier, that Petrus is a whole-time employee. If that assumption is not correct, then it could not be shown that the Insurance Company is bound in strict justice to pay him a living wage. It is true that Petrus does additional work, that he devotes all his time to the interests of the Company, that his efforts have redounded greatly to the advantage and profit of the Company. But if this extra work has been undertaken freely; if it is not even implicitly asked for; if it is outside, supererogatory to, the terms of the contract, then, while Petrus deserves, indeed, a reward for the work, it cannot be said that such is due to him in strict justice or that he can compensate himself occultly if the Company fails to give him the reward.[1]

THE OBLIGATION OF AN EMPLOYER TO PROVIDE DECENT WORKING CONDITIONS

Is an employer bound in commutative justice to give his employees decent conditions of work? I am not speaking of wages, but of such things as air, light, etc.

Studens.

This query raises a difficult point. As our readers are well aware, in many matters concerning the labour contract, it is not easy to state exactly what virtue is the source of certain obligations

[1] Cf. Mcrkelbach, op. cit. 416,2°: 'Famulus qui debitas operas *sponte* auget, nec ius ad maiorem mercedem nec proinde ad compensationem acquirit. . . . Si vero ita faciat *ex voluntate domini* expressa vel tacita, maiorem mercedem meretur; ac proinde si famulus, ipsa non soluta, *sibi* compensaverit, ad restitutionem non obligatur.'

—which are well recognized to exist.[1] In reply to our correspondent's query we can, however, state one clear principle which there is no gainsaying: if, the question of wages entirely apart, an employer explicitly contracts to give definite conditions of employment, he is bound in strict justice to provide these conditions. Even when such an explicit contract does not intervene it can further be said, we think, that certain minimal conditions of employment are implied in every labour contract--which minimal conditions form an integral part of the contract and, therefore, pertain to the virtue of strict justice. The difficulty lies largely in determining what precisely these minimal conditions are. Their nature and extent will obviously bear a relation to the type of work under consideration in the contract. Thus the conditions of work in an aircraft factory will, in the nature of things, differ vastly from those prevailing in the deep seams of a coalmine. And it must be assumed that the coal-miner is prepared to accept conditions of work which would be utterly unacceptable to the aircraft factory operative. Or, to put this the other way round, the conditions of work implied in the contract between the coal-miner and his employer are very different from those implied in the contract between the aircraft worker and his employer. It occurs to us that these minimal conditions, implied in every labour contract, might be stated in some general formula like the following: the employer is bound in strict justice to provide, as far as the nature of the work allows, such working conditions as constitute the ordinary safeguards against serious injury to the soul, mind and body of his employees. We are well aware that in stating such a general formula we have by no means solved the whole difficulty. For it is not easy to define which safeguards are to be regarded as ordinary, and which as extraordinary. But then it is not easy to say which means of preserving life are ordinary and which extraordinary—and yet the general principle is laid down for the guidance of human behaviour that we are bound to take the ordinary means of preserving our lives and bodily integrity. Accordingly, the statement of a general formula must be regarded at least as a helpful starting-point.

To revert to the safeguards. We assume that it would generally be regarded as a violation of strict justice if an employer were to allow his factory or workshop to be contaminated

[1] For instance, the obligation to pay a living family wage. In many of the textbooks on moral theology we find the mutual obligations of employers and workers dealt with under the fourth Commandment. Cf. Noldin, *De Praeceptu,* nn. 302-6.

by a poisonous gas leak from a near-by main. On the other hand, no-one would say that an employer is, in normal circumstances, bound to instal in his factory a high-class air-conditioning plant for the greater comfort of his employees. The elimination of the poisonous gas would rightly be regarded as an ordinary safeguard, whereas the installation *of* a costly air-conditioning apparatus, in the circumstances envisaged, would well be described as an extraordinary measure.

The general formula which we have set out above seems to correspond closely to a statement of Pope Leo XIII in his encyclical *Rerum Novarum*—though there is no explicit mention in the papal statement of obligations of strict justice. In regard to conditions of work Pope Leo wrote:[1] 'It is neither just nor human so to grind men down with excessive labour as to stupefy their minds and wear out their bodies. . . . Daily labour, therefore, should be so regulated as not to be protracted over longer hours than strength admits. . . . Work which is quite suitable for a strong man cannot rightly be required from a woman or child. And in regard to children, great care should be taken not to place them in workshops or factories until their bodies and minds are sufficiently developed. . . . As a general principle it may be laid down that a workman ought to have leisure and rest proportionate to the wear and tear of his strength, for waste of strength must be repaired by cessation from hard work. In all agreements between masters and work-people there is always the condition, expressed or understood, that there should be allowed proper rest for soul and body. To agree in any other sense would be against what is right and just; for it can never be just or right to require on the one side, or to promise on the other, the giving up of those duties which a man owes to God and to himself.' Pope Leo regarded this as a matter in which the State has the right and duty to intervene—if intervention is necessary. 'Whenever the general interest or any particular class suffers, or is threatened with harm, which can in no other way be met or prevented, the public authority must step in and deal with it. . . . If religion were found to suffer through

[1] Translation published by Catholic Social Guild, Oxford, under the title *The Workers' Charter,* pp. 37-8; cf. Code of Canon Law, canon 1524: 'Omnes ct praesertim clerici, religiosi ac rerum ecclesiasticarum administratores, in operum locatione debent assignare operariis honestam iustamque mercedem, curare ut iidem pietati idoneo temporis spatio vacent; nullo pacto eos abducere a domestica cura parsimoniacque studio, neque plus eisdem imponere operis quam vires ferre queant neque id genus quod cum aetate sexuque dissideat.'

the workers not having time and opportunity afforded to them to practise its duties; if in workshops and factories there were dangers to morals through the mixing of the sexes or from other harmful occasions of evil; or if employers laid burdens upon their workmen which were unjust, or degraded them with conditions repugnant to their dignity as human beings; finally if health were endangered by excessive labour or by work unsuited to age and sex—in such cases there can be no question but that, within certain limits, it would be right to invoke the aid and authority of the law.'[1]

We do not suggest that all State regulations regarding working conditions bind in strict justice. In our view, the sphere of strict justice, apart from specific contract, does not extend beyond the minimal conditions mentioned earlier. But in the economy of Christian teaching it is insisted that the fulfilment of the obligations of strict justice does not exhaust the content of the duties of employers towards their employees. There are further obligations which stem from the virtues of social justice and charity, and which are grave when serious matter is in issue. Some of these further obligations are concerned with conditions of labour[1] and many of them are now confirmed in some countries by State regulation. But, long before the intervention of any State, the Church, in pursuance of her Christian mission, proclaimed them as she proclaims them to-day. The basic Christian principle—it is, indeed, a principle of the natural law—from which the duties of the employer flow, is that the worker is a human being, with inalienable human rights and dignity, and his work has a social and individual value, and is a personal as well as a necessary contribution in the discharge of his duty of self-preservation. As Pope Leo XIII has put it:[3] 'Religion teaches . . . the employers that their workers are not to be accounted bondsmen; that in every man they must respect his dignity and worth as a man and as a Christian; that labour for wages is not a thing to be ashamed of . . . and that it is shameful and inhuman to treat men like chattels to make

[1] Trans, cit., p. 34. The Pope adds, however, that 'the law must not undertake more nor proceed further than is required for the remedy of the evil or the removal of the mischief.'

[2] We find in many Catholic writers who deal with this question some statement like the following: 'Besides paying a just wage, the employer is bound to provide proper working conditions; namely, sufficient rest, decent hours and sanitary conditions' (O'Kane, *A Catholic Catechism of Social Questions,* p. 68). But the writers do not indicate the virtues which are the source of these obligations; cf. Davis, *Moral and Pastoral Theology,* ii, p. 80.

[3] Trans, cit., p. 22.

money by, or to look upon them merely as so much muscle and strength.[1]

It can be said then, in direct reply to our correspondent's query, that the employer is bound in strict justice to provide those conditions of air and light which would be regarded in the circumstances *of the* particular work, as an ordinary safeguard against serious injury to the health of the worker. But, it must be repeated, beyond this sphere of strict justice there lies the wide field in which the great virtues of social justice and charity claim, and must be accorded, their due.

THE MORALITY OF STRIKES. LIGHTNING AND UNOFFICIAL STRIKES

In view of some statements which I have heard recently it seems to me that it would be very opportune if you were to discuss the Catholic teaching regarding strikes—with particular reference to lightning and unofficial strikes. I feel that many people have very inadequate notions, and some have incorrect notions, as to what that teaching is. I, for one, would greatly welcome and I know that there are others who would similarly welcome a discussion of the matter. It is not necessary to indicate why I consider that this discussion would be very opportune at the present time. And it is perhaps best not to give particular reasons. But it may be well to say, to avoid misunderstanding, that a discussion is requested in order that the position may be clarified and not in the least to arouse prejudice against any class in the State. In fact this query is sent at the request of a group of men in whose name I may fairly sign myself.

Operarius.

Our correspondent's query is, for the most part, on very broad lines. In reply to it we can hardly do more than firstly recapitulate the teaching of the approved authors[1] on the morality of strikes in general, and afterwards apply that teaching to the more specific questions of lightning and unofficial strikes. In the first part of our reply, then, it is clear that we must inevitably repeat matters which are familiar to very many of our readers. We shall do so as briefly as possible. We accept the suggestion, made in the query, that a discussion on the morality of strikes is particularly opportune, and we put that suggestion forward as an apology for the repetition

[1] Cf. Cronin, *Science of Ethics,* ii, pp. 354-71 ; Davis, *Moral and Pastoral Theology,* ii, pp. 84-6 ; Prümmer, *Th. Mor.,* ii, n. 309 ; Noldin, *De Praeceptis,* nn. 304–5 ; Fallon (McNulty-Goss), *Principles of Social Economy,* p. 259 et seq. ; Muller, *Notes d'Economie Politique* (Première Série), pp. 315-40.

of much that must be considered common knowledge and even commonplace. We hope that what we have to say may help to clarify the whole question.

A strike, in the technical sense of the term, may be described as the organized withdrawal of labour by a number of employees in order to check enterprise and thus force the employer to grant certain demands.[1] Writers usually speak of three main classes of strikes—the simple, the sympathetic and the general strike.[2] The simple strike is entered upon in order to force the employer to grant a concession or remedy a grievance which affects, or is thought to affect, all of the body of workers who withdraw their labour. In other words the reason for the simple strike is something personal to the strikers. The sympathetic strike may take many forms. The element common to all forms is that the purpose of this strike is not the removal of a grievance personal to the sympathetic strikers, but the removal of the grievance of some other group of workers who themselves have already gone on strike. The general strike means the cessation of work on the part of the whole, or almost the whole, body of workers in a particular country or large area. The purpose of such a general strike is very rarely, if ever, the elimination of any particular grievance. It is rather the general paralysis of industry over the area of the strike so that the strikers may be able to dictate terms to all the employers of that area or, perhaps, to effect some *coup d'état* in the political sphere.

Speaking in general terms, it can be said that there is no doubt that workers have, at least under an unorganized economic regime, a natural right to go on strike.[3] Prescinding from the existence of a just and binding contrary agreement,[4] workers may, as individuals, withdraw their services. And they may organize together to withhold their labour from a particular employer. But this right to strike is by no means unlimited. It can lawfully be used only when certain definite conditions are fulfilled. These conditions briefly are : there must be a just cause for the strike—that is to say, the strikers must

[1] In the British Trade Disputes and Trade Union Act, 1927, we find the following definition of a strike. It is 'the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal, under a common understanding, of any number of persons who are, or have been so employed, to continue to work or to accept employment.'

[2] Cf. Cronin, loc. cit.

[3] Cf. O'Kane, *A Catholic Catechism of Social Questions*, p. 71.

[4] Cf. Fallon, op. cit., p. 260, and Merkelbach, *Th. Mor.*, ii, n. 556.

have a just demand and they must be aware of its justice, they may not blindly declare a strike ; the good which there is reasonable hope of attaining by the strike action must compensate for the evils which inescapably result from it ; the means used in the conduct of the strike must be lawful.[1]

A strike, even one of small proportions and short duration, involves serious consequences.[2] It is almost a truism to add that the more widespread a strike is, and the longer it lasts, the more serious are its consequential evils. A strike usually involves grave temporal loss for the employer. His industry or business may be brought to a complete standstill. Machinery may' deteriorate by non-use. Contracts which cannot be undertaken are missed. Customers are lost, perhaps irrevocably. The workers on strike, too, as well as their dependents, will, as a rule, suffer grievously. The loss of their weekly wages is for the vast majority of workers a very serious matter. It will often mean want and misery. The strike allowance granted by the Union—if the strike is official—can at best be a very poor and meagre substitute. And we may point out that, if the strike is unofficial, even this meagre allowance will not be given. The citizens generally may be gravely inconvenienced as a result of a strike for which they have no responsibility whatsoever. It may be that some important commodity or some necessary facility is not available by reason of the strike action. Such inconvenience to the general public would be very obvious in the case of a strike on a transport service like the railways. And there are other less ponderable though scarcely less serious results begotten of strikes, results which affect the employers, the employees and the body of citizens. There are the atmosphere, and feeling of unrest, in the strike area, the antagonism and enmity between classes, the danger of violation of the public peace, the innumerable infringements of charity and perhaps of justice. Our list is by no means exhaustive. We have only touched upon some of the more obvious evil consequences associated with strikes, but enough has been said to justify the wisdom of Catholic

[1] ' Il nous semble . . . que le droit de grève se justifie par ce fait que la cessation collective d'un travail convenu ou le refus concerté de renouveler le contrat pour un nouveau terme, est souvent le seul moyen que possèdent les travailleurs pour s'assurer d'équitables conditions d'emploi et la sauvegarde de leurs légitimes intérêts' (Muller, op. cit., p. 321).

Merkelbach, loc. cit., briefly expresses the necessary conditions thus : ' Communis cessatio ab opere ex condicto non est licita, nisi (1) ob finem legitimum fundate spe consequendum, (2)juste existente causa proportionate gravi, (3) dum alia desit via, (4) nec adhibeantur media iniusta.

[2] Cf. Cronin, loc. cit. ; Tanquerey, *Th. Mor.,* ii, n. 845.

moral teaching, which requires a just and proportionate cause—in general a very serious cause—before a strike may lawfully be undertaken. Strikes are a form of economic warfare, and, like wars, they should only be waged when other available peaceful means to achieve the desired purpose have been tried and have failed.[1]

It is only when a strike is initiated as a last resort that it may truthfully be said that there is a sufficient cause to justify it morally. In view of their consequential evils, outlined above, it must be obvious to all thinking men that strikes may not lightly be entered upon, or continued. The changes should be rung on those truths. Those who initiate a strike are taking a serious and perhaps very far-reaching step: those who do so lightly incur a heavy responsibility before God and man. Right-minded citizens everywhere cannot but deplore the present-day frequency of strikes in many countries, and they may be excused for doubting if the parties responsible for those strikes have duly considered the serious import of their action and the consequences involved. We have said earlier that a very serious cause is required to justify strike action, because the good which there is reasonable hope of achieving by the strike must be such as compensates for its widespread evil effects. Otherwise the net result of the strike would be evil, not good. While it may often be difficult to determine beforehand the course and result of a strike, and consequently to determine what good will accrue therefrom, it may, in the light of past experience, nearly always be taken for certain that it will give rise to considerable evils, and, unfortunately, even a just strike may not win a fair settlement of the dispute. Moreover, a strike, which is otherwise just, may become unlawful by reason of the means used in pursuance of it. For it must be remembered that the strikers may not interfere with the just rights of others—of the employer, of the general public[2], or of other workers; may not, therefore, use force

[1] Muller, op. cit., pp. 322-3, writes: "La grève ne peut être qu'un expedient extrême auquel on n'aura recours qu'après avoir épuisé tous les autres moyens d'entente et de conciliation. . . . Tout comme le droit de guerre, le droit de grève ne trouve légitimement place que dans un régime social inorganisé. Son exercice n'est plus admissible dès lors qu'une organisation rationelle de la vie sociale a pourvu autrement et d'une manière efficace à la protection des droits et des légitimes revendications des travailleurs."

[2] Cf. *A Code of Social Principles* (Catholic Social Guild, Oxford): "The public interest is the first criterion for estimating the lawfulness or otherwise of any concerted cessation of work. To this criterion must be added regard for justice and charity. This public interest is more immediately at stake when it is a question of services directly established for the good of the country; and of undertakings, even private ones, that supply the most essential common

or fraud to compel other workers to come out on strike, or to prevent them freely undertaking labour *if they so* desire.[1] This principle seems to be forgotten frequently in recent times and we are often presented with the strange anomaly of workers who, while vehemently insisting upon their own freedom of action regarding the giving or withdrawal of their services will deny to their fellow-workers this same right of freedom, and will insist upon their joining in the strike-movement willy-nilly. This is held to be necessary in order to achieve the solidarity necessary for successful strike action. While no one can deny that the workers have a right to attain a certain solidarity, a right to form associations and unions to maintain and enforce their just rights,[2] these organizations cannot be abused to operate against the natural rights of the individual, and every individual has a strict natural right that unjust means be not used against him in the ordering of his chosen manner of life. At the same time there is no doubt that the strikers are entitled to use moral suasion[3] to enlist the sympathy, support and co-operation, within limits, of their fellow-workers in order to attain the just objective of their strike. There is obviously a vast difference between using force or fraud to compel or induce a worker to do something which he is unwilling to do, and which he has a perfect right not to do, and appealing to him to do it freely. The situation is grossly aggravated, if force, fraud or any other unjust means is used to compel or induce a worker to do something which he may not do lawfully.

We have mentioned and have discussed briefly the conditions that are required in order that a strike may lawfully be initiated. These conditions apply to every form of strike. We are not called upon here to give an opinion as to how far they are present in any particular case. But, again speaking in general terms, it may be stated that the necessary conditions are most easily and, consequently, most frequently, found to be present in the case of a simple strike—particularly in

needs. Certain services arc even so indispensable to the community that it ** 99^*100) l° PUt ^Orwar^ any 8UPP°sition „iat wou'd justify a strike '

[1] The question of black-legging and strike-breaking is a very delicate problem : cf. McDonald, *Some Ethical Aspects of the Social Question,* p. 61 et seq.

[2] Cf. Encyclical *Rerum Novarum,* p. 42 et seq. (English translation, Catholic Social Guild, Oxford).

[3] Cf. Cronin, op. cit., pp. 358, 363 : ' Discussions, appeals, promises are certainly allowed ' ; Muller, op. cit., p. 322.

that type of simple strike which continental writers,[1] following the analogy of war, call a defensive strike—that is one undertaken as a protest against, and to secure a remedy for, unjust treatment on the part of the employer, when, for example, an unjust wage is being paid, or intolerable conditions of labour are imposed. It will also be possible, though somewhat less easily, to have the requisite justifying conditions in the case of a simple ameliorative strike.[2] That is the name given to a strike entered upon to secure improvement in wages and conditions which, however, do not fall below the minimum required by justice. Again, the necessary justifying conditions may be present for a sympathetic strike, but only when that strike remains within a very limited field.[3] If, for example, the employees of A have a just and proportionate cause for striking, and if A is effectively assisted by B to resist the just demands of the strikers, then the employees of B may strike in sympathy, or refuse to handle goods produced by A. Or if one group of workers is totally incapable, by a strike of its own members, of securing the remedy for manifest injustice, closely affiliated workers would be entitled to go on a sympathetic strike—provided always that they have confirmed that there is a just and proportionate cause for the original strike. Beyond these limits it seems impossible to justify a sympathetic strike. It is impossible to justify the principle that a strike by any group of workers *eo ipso* entitles all other workers in the area to go out on a sympathetic strike, or to apply the 'tainted goods' principle. Incidentally, the full and logical application of this principle would lead to ridiculous conclusions.[4] Nor can we conceive concrete circumstances under a democratic regime in which all the conditions necessary for liceity would be present in the case of a general strike.[5]

Our correspondent particularly asks us to discuss lightning and unofficial strikes. Lightning strikes are entered upon without any previous strike notice or ultimatum to the employer.

[1] Cf. Mcrkelbach, Prümmer, Muller, op. cit. The defensive strike is given a privileged position. It is held as the common opinion against the Socialists that strikes not merely suspend, but break off, the contract between the employers and employees. An exception is made, by those who hold the common opinion in favour of the defensive strike, which they say merely suspends the contract. 'Celle-ci n'est que la riposte des ouvriers au patron qui viole le premier le contrat' (Muller, op. at., p. 316).

[2] Merkelbach, op. cit., n. 556.

[3] Davis, loc. cit.

[4] Cf. Cronin, op. cit., p. 367.

[5] Ibid., p. 370.

• 'Sans observation des délais de préavis' (Muller).

It can hardly be maintained then that, in these circumstances the strike is a last resort, that all less objectionable or even peaceful means of securing, let us suppose, the just demands of the workers, have been unsuccessfully tried. For surely the threat that strike action will be taken unless the workers' demands arc met is clearly a less dangerous means than an actual strike, and is, therefore, a means that should obviously and logically precede actual strike action.[1] We arc of opinion, then, that the necessary conditions for liceity will not be present in the case of a lightning strike.[2] It may be suggested that a strike notice enables the employer to forestall effectively the strike action, so that the actual strike, when it comes, will not adversely affect him, and thus will not help the workers to secure their demands. In other words, it may be suggested that a lightning strike is the only effective kind of strike. It can be denied emphatically that this suggestion is generally true. It might possibly be true in very exceptional circumstances—but that very' rare possibility could not justify the use of a lightning strike. And, moreover, it must be remembered that the end does not justify the means. It cannot for a moment be admitted that, given a just cause for their strike, the workers may freely do whatever is necessary to render the strike successful. If this were admitted, the most appalling conclusions would obviously follow.[3] We think, despite any suggestion to the contrary, that the general principle is clear and remains intact—namely, that a lightning strike is an unlawful weapon of economic warfare.

An unofficial strike is one entered upon by the workers in defiance of, or at least without consultation of, the leaders of the Trades Unions to which they belong. Such a strike may well be, and usually would be, a violation of a quasi-contract made by members of the Union, and, as such, would frequently be unjustifiable. Moreover, the unofficial strike normally would not fulfil the general conditions necessary for liceity. It will very often be a lightning strike and, therefore, to be condemned as such for the reasons given. There will as a rule be doubt as to the justice of the demand. All the other available means of righting any wrong will not have

[1] Fallon, op. cit., p. 263, writes: 'Especially before all strikes there shall be a *delay—an exact statement of grievances or claims shall be made public—an attempt at an amicable settlement, mediation or arbitration* by jurisdictions created for this purpose.' Italics are author's.

[2] Muller, op. cit., p. 322, seems to make an exception in favour of defensive strikes.

[3] Cf. Cronin, op. cit., p. 359.

been unsuccessfully tried—as, presumably, sincere leaders of Trades Unions will, if they are asked, take up with the employers any genuine grievance on the part of their members'—and the subsequent negotiations may be highly successful. On the contrary, in the case of an unofficial strike, there will be comparatively little hope of success and, in the absence of strike pay, there will be the increased misery and suffering of the workers and their dependents. All these factors combine to show that an unofficial strike is unlawful as a general rule. There may, at the same time, be very rare circumstances in which it would be lawful. It could happen, it has happened in other countries, we are told, that the leaders of the Trades Unions would wrongly refuse, for some less creditable reason, to take up the grievance of some of their members, and that the only means left to the workers to secure redress would be to declare an unofficial strike. In such circumstances, if the other requisite conditions are present, the unofficial strike would be lawful.

In view of the manifold evils associated with strikes it is not strange that the Catholic Church, while admitting that workers have a natural right to strike, discourages the use of that right and recommends the public authorities to institute other means of remedying labour grievances.[2] Pope Leo XIII, in his famous encyclical, *Rerum Novarum,* has written : 'When work-people have recourse to a strike, it is frequently because the hours of labour are too long, or the work too hard, or because they consider their wages insufficient. The grave inconvenience of this not uncommon occurrence should be obviated by public remedial measures ; for such paralysing of labour not only affects the masters and their work-people alike, but is extremely injurious to trade and to the general interests of the public ; moreover, on such occasions, violence and general disorder are generally not far distant, and thus it frequently happens that the public peace is imperilled. The laws should forestall and prevent such troubles from

[1] This is one of the obvious functions of an Union of Workers. 'We may lay it down as a general and lasting law that working men's associations should be so organized and governed as to furnish the best and most suitable means for attaining what is aimed at ; that is to say for helping each individual member to better his conditions to the utmost in body, mind and property.' —Leo XIII, Encyclical *Rerwn Novarum,* English translation, p. 46, cf. p. 48.

[2] In some States strikes are illegal. Disputes must be submitted to compulsory arbitration. In other States strikes are illegal pending investigation of the dispute by a special board—cf. Shields, *The Labour Contract,* p. 107. In the Brazilian Constitution of 1937, strikes are proscribed as anti-social and harmful to all interests.

arising; they should lend their influence and authority to the removal in good time of the causes which lead to conflicts between employers and employed.'[1] Pope Pius XI, in his encyclical *Quadragesimo Anno,* refers to the situation in Italy in these words:[2] 'The corporations are composed of representatives of the unions of workingmen and employers of the same trade or profession, and as true and genuine organs and institutions of the State, they direct and co-ordinate the activities of the unions in all matters of common interest. Strikes and lock-outs are forbidden. If the contending parties cannot come to an agreement, public authority intervenes. Little reflection is required to perceive the advantage of the institution thus summarily described: peaceful collaboration of the classes, repression of Socialist organizations and efforts, the moderating influence of a special ministry.' Writers on Sociology and Political Economy[3] mention peaceful means whereby strikes may be prevented, or if they have already begun, may be brought to a speedy and satisfactory termination. Among such means are negotiation or conciliation and mediation, optional and compulsory arbitration,[4] the setting up by the public authority of tribunals to fix rates of wages and conditions of labour.[5]

As has been noted earlier, many people rightly deplore the present-day frequency of strikes and they are suspicious, to put it mildly, of the liceity, at least of the objective liceity, of many of them. In saying this we do not wish to minimize by one jot or tittle the undeniable claims of the workers to a just wage and to fair conditions of labour. Nor do we wish to suggest that the blame for strikes lies always or entirely at the door of the working classes. Yet we feel justified in saying that it is very necessary that the workers should be told, without mincing of words or apology, that they have duties as well as rights; that they have grave and inescapable duties to their fellow-citizens and to the society to which they belong; that they should clearly understand what these duties

[1] English translation (C.S.G., Oxford), p. 35.

[2] English translation (C.T.S.,), p. 42.

[3] Cf. Muller, op. cit., p. 340 ct. seq.; Shields, op. cit., ch. viii.

[4] Cf. Lucey, article, 'Strikes and Compulsory Arbitration,' and subsequent comments on article by a number of representative writers, *Studies,* vol. xxv., p. 177 et seq.

[5] 'There is a preventive remedy for strikes, as for every conflict, whether in private undertakings or in public services—arbitration. The joint action of organized industry and of public authorities should tend towards the organizing of conciliation and arbitration by means of permanent bodies, supported by effective sanction.' *A Code of Social Principles* (C.S.G.), n. 102.

are, and that they should see to it that they are left free to discharge them. In fairly recent years, and, perhaps, because of the development of organization, a very harmful tendency has become more observable. It is the tendency of the individual member to shirk personal responsibility; to attempt to find excuses for reprehensible action, or its results, on the grounds that the action has not been taken personally but by the corporate body or by its leaders. The working-classes should be made aware that they cannot escape responsibility for unlawful strikes and their attendant evils by facilely shifting the blame on to the shoulders of Trades Union leaders—for it is a primary duty of the workers to ensure that membership of Unions does not in any way compel them to undertake immoral actions; to ensure,[1] therefore, that their unions are controlled by conscientious and prudent men, who will not rashly plunge them into a strike for which there is no moral justification, and, we may add as a further staying thought, from which, if the truth is fully told and everything weighed in the balance, so very rarely does any appreciable benefit result to the back-bencher trades unionist.[2]

QUALIFICATIONS OF EMPLOYEE

A vacancy arose in a business and an advertisement was inserted in the press stating qualifications necessary and salary offered. A man replied who was highly competent but lacked the required technical training. Papers were not asked for and this man got the job and drew the salary for two years. During a mission he became anxious and told the assistant manager who said that if he could be assured that the employee did the course there would be no question of revelation or dismissal. In a weak moment the employee gave the assurance. Now he has again become anxious about his title to retain his past earnings and to continue in his position. I should be grateful for your solution.

Lector.

In our view the employee need not be disturbed in conscience. He may retain his past earnings and may continue

[1] Cf. Cronin, op. cit., p. 364.

[2] As we have noted earlier, even when there is a just cause for a strike there is no guarantee that it will bring about a just and equitable settlement of the dispute. 'All it ensures is that the party with the greater economic strength and endurance will win. And as often as not, that will be the party with the least right on its side; for, as in international disputes, right and might are not always found together.' (Lucey, art. cit., p. 180).

in his position. The contract of service is substantially valid. If the presentation of testimonials or evidence that the technical course had been done were essential, the employer should have demanded them. He did not do so at any stage. And so we may assume that this technical qualification was regarded as accidental or that non-posscssion of it is implicitly condoned. The employee has given, and is giving, satisfactory and competent service, and the employer has no complaint.

MORALITY OF RESTRICTIONS OF RIGHTS OF LANDLORDS

John Jones, the landlord, notifies Paul Smith, his tenant, that he, the landlord, wishes to live in the house occupied by the tenant and gives the three months' notice of dismissal as required by law. The tenant brings the case to the law courts and wins it (i.e. the tenant is left in possession). The minutes of the case show prejudice against the landlord who is a stranger, and favour to the tenant who is a native.

By law the present rent may not exceed the 1914 rental of £80 per annum, the landlord paying the rates as the house is not separately rated. But whereas the rent has stood still, the rates and expenses have not and they now amount to approximately 75 per cent, of the total rent paid. The present position, as is obvious to both landlord and tenant, is quite uneconomic and is likely to become increasingly more so as rates and costs of repairs continue to increase from year to year.

So much impressed by this aspect of the position is Cyril Cox, another tenant on the same property, that he, himself, has voluntarily undertaken to carry out repairs which, legally, are the landlord's responsibility.

More than a year following the law case, Paul Smith notifies his landlord that a large amount of work, the lowest estimate being £300, needs to be done on the house which, if the landlord will not see to, he, Smith, will have completed and have the bill of the entire cost sent to the landlord.

The civil law permits the tenant to act accordingly. May he do so in conscience ?

Saecularis.

The moral issue raised in the query submitted by 'Saecularis' is stated in the last sentence. It is whether a tenant may in conscience avail of the prescriptions of civil law to enforce certain legal rights against the landlord in reference to the landlord's property. Briefly, the answer is that if the prescriptions of civil law are just the tenant may, with a safe conscience, avail of them. And the presumption must be that

these legal prescriptions are just. In the interests of the common good, the State has wide powers in the matter of property. In virtue of the *altum dominium* vested in it, the State may, when the public good demands it, transfer rights from one citizen to another. The State can pass laws, again in the interest of the common good, which control the use of property, which restrict or peg rent charges, which protect tenure. Such laws may sometimes be very necessary, for instance in periods of acute housing shortages, to prevent the unjust exploitation of tenants. But the measure in which the State may intervene in regard to private property is strictly limited by the exigencies of the common good. Intervention of the kind mentioned may be thus necessary ; and if so, it is justified. And, as has been stated, presumption favours this conclusion. But the presumption will cede in face of contrary fact. The State has duties to all its citizens—to landlords as well as to tenants. It must protect the property interests of the landlord so long as and to the extent that these interests are not inimical to the common good. Generally speaking, tenants are the weaker class and more frequently need the positive protection of the civil law. But landlords are entitled to fair treatment and, at a minimum, they should not be compelled by law, apart from a crisis, to accept what would, in normal circumstances, be an unjust rent or inequitable terms of tenure. In such matters the State should, if its intervention is necessary, hold the balance evenly between the diverse interests and should try to lay down regulations which will ensure, as far as possible, equitable conditions for all.

In the earlier part of his query our correspondent sets out a case in the course of which, among other things, he purports to state the prevailing landlord-tenant law. If this statement were fully accurate, few, we think, would deny that this law would, in normal times, be obviously unjust to the landlord. And if this were so the tenant could not avail in conscience of its provisions. But our correspondent does not state the present law correctly. It is true that it is difficult to effect termination of a tenancy. To do so the landlord would have to prove disproportionate hardship. It is also true that the 1914 rental is a very relevant factor in the determination of the amount which may be charged to-day for certain classes of houses. But the law allows an addition to the 1914 rent on the foot of increased rates and liability for more costly repairs. The landlord can apply to the courts for a re-assessment, on these grounds, of the rent charge. Even though the

house is not separately rated, a court order can be sought for an *ad hoc* valuation—that is, to decide what measure of increase of rent will be allowed in view of the rate charge on the house. Apparently the landlord in the case has not availed of his right to apply to the court to have the rent of the house determined in the light of the factors of increased rates and repair costs. The issue which was brought before the court was an appeal by the tenant against the dismissal notice. Thus the decision of the court had no relevance to the rent charge. We were amazed at our correspondent's allegation that the court was prejudiced, and even more amazed to note the implied reason for this prejudice. We do not know how access to the court minutes, on which the charge of prejudice is based, could have been secured. In any case this charge must be rejected as being as unlikely as it is irrelevant.

Leaving aside the inaccuracies of our correspondent's statement and the consequent weakness of his pleadings, we are far from suggesting that the current legal situation regarding landlord and tenant—especially as covered by the Rent Restriction Acts—is unobjectionable. An unduly harsh burden seems to be placed on certain landlords, on the private owners of houses, in contradistinction to the public authorities. In estimating the rent of houses a more generous account might be taken, we think, of the sharp increases in rates, of the steep rise in the costs of maintenance and repairs; and particular consideration should be given to the abysmal devaluation of money since 1914. At the same time we realize that, in the interests of the public good, rent charges cannot be allowed to rocket. Housing, at a reasonable rent, is an essential requirement for the people.

THE BINDING FORCE OF A CONTRACT THE TERMS OF WHICH HAVE BEEN ALTERED

Perhaps you would be kind enough to answer the following question :—

A congregation of nuns wishes to print 20,000 folders about their work and obtains an estimate of £108 from a printer for the job. The folder, however, when drawn up, is of a somewhat larger size and contains many more pictures than the sample sent to the printer for the purpose of preparing the estimate. The printer on seeing this more extensive copy realizes at once that the work will cost a good deal more than he had originally estimated but, as he is very busy, he neglects to inform the nuns of this and, taking it for granted

that they will pay the increased sum, he goes ahead with the work. The folders are printed and delivered and the nuns, much to their amazement, receive a bill for £156.

The nuns are in possession of the folders. Are they obliged to pay this sum of £156 or are they obliged to pay only the sum they originally agreed to ? They say that if the printer had informed them in time of the increased cost they would have ordered less folders or, alternatively, have so altered their size and contents so as to be able to get the work done for the original sum as they really cannot afford more.

Patritius.

If the case submitted by ' Patritius ' were brought before the courts and if, perchance, a decision were given against the nuns they would be bound in conscience, *post sententiam judicis,* to honour this decision.

We presume, however, that our correspondent rather wishes to know what the position is as the case now stands—that is *ante sententiam judicis.* It seems to us that an equitable solution would be by way of compromise, by the time-honoured expedient of splitting the difference, more or less. There have been, we think, mistakes and advantages on both sides. It was bad business on the part of the printer—having observed the quantity of copy sent for printing in comparison with that submitted for the estimate—not to indicate to his clients that if all the copy sent were to be included, he would have to increase his estimate. Ordinary business procedure would demand that he give this intimation. He had no right to take it for granted that the nuns would accept the higher charges. They had got and accepted a firm estimate. If this had to be departed from, they should have been informed and their acceptance of the new estimate sought. We take it that the printer made more profit out of the larger folder : his profit would be reckoned on a percentage basis. Yet the nuns on their side can hardly have been completely unaware that more extensive copy was sent for printing than was submitted when the estimate was sought. (We assume, however, at this point that they acted in good faith). Moreover, they have got a folder which contains all the matter sent, which objectively cost more and, therefore, presumably, is a more attractive, a bigger and a better folder than that contemplated in the original estimate. In equity they might well be expected to pay something more for this enhanced value.

But we have yet to consider the case from the standpoint of strict justice. In a sense, there are two distinct transactions

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involved. Firstly, we have the agreed contract—which was never implemented. It related to a definite quantity of copy, a definite number *of* folders for which a firm price was agreed upon. If this contract had been adhered to, there would, of course, have been no problem. But it was not adhered to. And apparently both parties went outside its terms. A greater quantity of copy was submitted for printing, greater costs were involved, a higher price was charged. Now, the question is who was primarily responsible for this departure from the terms of the original contract and who, therefore, must bear the consequences for the additional expenses? At first sight it might seem that the nuns were primarily responsible: they started the trouble by submitting a greater quantity of copy than was sent for the estimate. But this is only part of the story, as is obvious from what has been written earlier. The nuns can be held to be primarily responsible only if they acted *mala fide* in sending the extra copy—that is if they sent it knowingly and in the hope of deceiving the printer and of thus getting value beyond that to which they were entitled. If they so acted—and we should hesitate to think that they did—they are now bound to pay up. Apart from this hypothesis of bad faith on the part of the nuns the printer must, in our view, be held responsible for the altered contract. He gave the nuns a folder they had not bargained for. If they had known that the terms of the contract were to be altered they would not, they say,—and we must take their word-have accepted the new terms. They may fairly claim that they thought that the extra copy would make no appreciable difference in costs, or if it did, that they should have been told. In brief, the printer has involved the nuns in new expenses of which they were not aware or apprised, and which they would not undergo had they been apprised. They have not given any consent to the new contract, hence they are not bound by it. The printer's assumption that they would pay is no substitute for their consent.

OWNERSHIP OF THE INCREMENTAL VALUE OF LOST PROPERTY

In the reign of Queen Victoria, a schoolboy posted in the College letter-box a letter to his father. It never arrived and was forgotten until some time ago when a young man on the domestic staff of the College was cleaning out the letter-box and found the letter. He took it to the Superior, who is a philatelist, and who observed at once that

the stamp on the letter is in fact now worth a considerable sum of money. All his colleagues, of course, agree that 'res clamat ad dominum,' but some say that the servant who found it can keep it, as the owner had long since abandoned it. Others think that it belongs to the father to whom it is addressed, now a very old man. A few have suggested that it should go to the person who posted it. Their argument is that he never really parted with it, as it got stuck in the box. The position is, they say, the same as if he had lost it in the building. Your opinion on this complex case would be greatly valued.

Paul.

In our view of this very interesting case the letter, with its now valuable stamp, belongs to the original sender and, therefore, it should be returned to him. There are many reasons for this view. The sender is the primary owner of his private letters. It is true that, on receipt of the letters, the recipient acquires a joint ownership with the sender—an ownership which is recognized in civil law.[1] But in the case under discussion the letter was never received and, therefore, the addressee did not actually acquire any share of ownership in its regard. The letter in question is not a *res nullius* or a *res derelicta.* The placing of the letter in the College letter-box did not imply any internal or external abdication of ownership. The intention of the sender was not by any means to abandon the letter—as it would, for instance, if he had thrown it into a waste-paper basket. His intention was to commit it to the care of the Post Office for safe delivery to the addressee. Hence, even if, in accordance with this intention, the letter had been correctly posted and had reached the Post Office officials there would have been no external abandonment of ownership. In the actual circumstances under consideration there is, we may add, an *a fortiori* argument for non-abandonment as, through a mistake, the letter did not in fact reach the Post Office officials. We agree, then, with the argument of the few, mentioned at the end of the query, that the position is the same as if the letter had been lost in the building rather than in the letter-box. In the circumstances, therefore, the letter may be described as a *res amissa.* The passage of a long period of time has no particular relevance in the case.[2] Though the letter cannot be said to be a *res nuper amissa* the owner is known and can be reached. Consequently the finder acquires no right to the letter. His obligation to restore it to the owner

[1] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 426.
[2] Cf. Crolly, *De Justitia et Jure,* iii, n. 1107.

is clear. *Res clamat ad dominum.* The fact that the letter was discovered by the merest chance does not alter this obligation. It is accepted teaching that the owner of lost property does not ever completely lose his right to the property so long as it remains, *in se vel aequivalenter,* in the hands of the finder.

> Unde infertur dominium rei amissae ex toto non amittitur quamdiu per casum possibilem, licet fortuitum ac rarissimum, dominus comparera possit; rarissime dominium rei amissae penitus amittitur quia vix unquam vere impossibile est ut dominus comparcat ct rem agnoscat ; rem amissam quae in se vel aequivalenter apud inventorem maneat, jure naturae semper reddendam esse domino quum comparcat.[1]

It is true that until the true owner can be discovered, the finder of lost property acquires rights in this property, absolute or perfect rights as against outsiders, but only conditional or imperfect rights in relation to the real owner.[2] And we may add here that, in our view, the rights in question are rights of administration rather than rights of ownership.[3] We would not admit, despite what authors like Noldin say,[4]* that the title of occupation can validly be availed of in the matter of lost property.[6] The title of prescription can, of course, operate in favour of the *bona fide* finder provided the property found be *res apta ad praescriptionem.* But it should be pointed out that movables—and the property under discussion here is a movable—are not *res apta ad praescriptionem* according to our civil law.[8] Davis writes :[7] ' So long as such a chattel is retained it must be restored to the owner whensoever discovered ; this principle of justice is embodied in English law which gives no acquisitive prescriptive right over movables.'

The enhanced value of the stamp arises by way of natural increment of fructification. It belongs, therefore, by the title of accession, to the owner of the letter as posted. *Res fructificat domino.* It might possibly be objected that the increased value of the stamp is somehow due to human effort, that it is an industrial rather than a natural fruit.[8] Even if this objection were sustainable, the mere finding of the letter by the member

1 O'Dea, *De Justitia et Jure, Notulae,* n. 663.
2 Cf. Crolly, op. cit., i, n. 642.
3 ' Observandum esse censemus hanc doctrinam veram esse quod attinet ad administrationem non autem quod ad dominium harum rerum (amissarum) attinet nisi potestas publica et legitima harum rerum dominium ob bonum publicum transtulerit.'—Crolly, op. cit., iii, n. 1107.
4 *De Praeceptis,* n. 393.
6 Cf. Priimmer, *Manuale Th. Mor.,* ii, n. 49.
6 Cf. O'Dea, op. cit., n. 729.
7 Op. cit., ii, p. 286.
8 Cf. Slater, *Cases of Conscience,* pp. 263-4.

of the domestic staff is not an act which gives title to the industrial fruit. Indeed, the only act which could be conceived to be even remotely responsible, in the circumstances, for the accessory increment was the mal-placing of the letter in the box. And this was the act of the sender. Consequently, even if we were to accept the highly improbable suggestion that the increased value of the stamp could be regarded somehow as an industrial fruit we should still conclude that this value is the property of the sender of the letter.

In further support of the solution given it may be pointed out that no moralist would question the strict right of the sender to the letter, to its contents and to any secret information it expressed.[1] This is only another way of saying that no moralist would suggest that the letter, of which there is question, is really a *res derelicta.* If it were such, then it might be maintained—it is maintained by some moralists[2]—that the finder would not violate any strict right by examining its contents. If the letter is not a *res derelicta* neither is the stamp attached thereto. It would surely be an unprincipled form of casuistry which would suggest one solution in regard to the ownership of the letter and another in regard to the stamp affixed to it.

OBLIGATIONS OF HEIRS TO PROPERTY

I have been asked, *in foro externo,* the following question :

A woman died leaving her entire property by will to her nephew. Previously, she had gone security in the bank for a loan to another nephew. The legatee took out probate and his aunt's estate was transferred in its entirety to him. Later the bank officials became aware that the bill for which the deceased had gone security had now, by their oversight, nothing to back it. They hastily requested the legatee to renew the bill by signature, but he refused to do so.

Has he a moral obligation to honour his late aunt's pledge and to pay up the loan, if it becomes a bad debt which, at the moment, seems likely ?

Rusticus.

It is a well-recognized principle of moral theology that heirs to property are morally bound to honour and discharge the real debts attached to the inheritance they have accepted.[3] If, however, these debts exceed the value of the property inherited,

[1] Cf. Priimmcr, op. cit., ii, n. 181.
[2] Cf. Noldin, op. cit., n. 671; Jonc-Adclman, *Moral Theol.,* n. 382.
[3] Cf. Lchmkuhl, *Th. Mor.,* i, n. 1157 ; Noldin, *De Praeceptis,* n. 554.

the heirs are not bound to the excess.[1] In other words, the property passes on to the heirs with the attached obligation of paying all real debts to the extent that the estate is capable of meeting them.[2] It seems clear to us that when the aunt went security, on the basis of her property, for her nephew, a real debt was contracted on that property. Therefore the nephew who is heir to the entire estate is morally bound to honour this debt by renewing the signature of security with the bank, and even by paying up the amount of the loan if it becomes a bad debt—unless the bank condones these obligations. If the loan becomes a bad debt, through the fault of the nephew who received it, he is bound, in so far as he can, to make good the loss to the heir.

SMUGGLING AND PROFITEERING

Would you kindly discuss the following case ? :—

Caius, a smuggler, if questioned by Republic officials always denies having contraband goods. He sells his smuggled tea in Dublin at seven shillings and sixpence a pound. He sometimes gives a few pounds of tea to the Customs official who is to examine his luggage. On one occasion the Republic Customs confiscated thirty pounds of tea found in Caius' car at the Border. Caius later returned, recovered the tea secretly from the Customs shed and sold it in Dublin at ten shillings per pound.

Interested.

The activities of Caius, as described by our correspondent, raise many points of theological interest. First of all we should, perhaps, mention the fundamental question as to the nature of the obligation imposed by tax laws. Our readers are well aware that various theological views have been advanced on that question. Briefly, we may say, there are four main views, each of which can claim a not inconsiderable amount of reputable theological support. Some theologians[3] maintain that there is an obligation in strict justice to pay all just taxes whether they are direct or indirect. Others[4] say that the obligation arises

[1] Cf. St. Alphonsus, *Th. Mor.,* l. 1, n. 1398.

[2] Heirs to property are bound in justice to discharge the real vows of the deceased owner—cf. Priimmer, *Manuale Th. Mor.,* ii, n. 402.

[3] Cf. St. Thomas, *S.T. 2,* 2 q. 87, a. 1. ; St. Alphonsus, *Th. Mor.,* l. 3, n. 616 ; Billuart, *De Justitia,* d. 9, a. 7 ; Aertnys-Damen, *Th. Mor.* i n. 831 · Prümmer, *Th. Mor.,* i, n. 293.

[4] Cf. Vermeersch, *De Justitia,* n. 106 ; Waffelaert, *De Justitia* n 420 · Lehmkuhl, *Th. Mor.,* i, n. 981.

only from legal justice. It is contended by a third group[1] that all tax laws arc purely penal. And finally there are many theologians[2] who claim that there is a direct obligation—at least in legal justice—to pay direct taxes, but that indirect tax laws are purely penal. To examine the merits of these various views would take us too far afield here. And, amid such variety[3] of well-supported theories, it could not reasonably be expected that such examination would lead to any universally acceptable conclusions. Fortunately, however, this examination is not necessary for a discussion of the case submitted by ' Interested,' because the theologians, despite the variety of theories enumerated above, are in fairly general agreement as to their conclusions on the practical points at issue.

Caius has been guilty of evading indirect taxes. The vast majority of theologians will, in practice, regard this evasion as much less serious than the evasion of direct taxes ;[4] a considerable number, as we have noted above, consider that the laws imposing indirect taxes are purely penal—but all, even the most lenient in this matter, declare that those who make a regular profession[5] of evading even indirect taxes are guilty of grave sin. Noldin, for instance, writes :[6]

> Leges quae respiciunt tributa indirecta sunt leges mere poenales. . . . Ergo non peccant neque ad restitutionem tenentur, qui important et vendunt merces prohibitas ; qui tamen de industria ac veluti ex proprio negotio defraudandis vectigalibus occupantur (Schmuggler) a peccato gravi excusari non possunt.

What is the nature of this sin ? Is it a violation of strict justice involving the obligation of making restitution ? Most theologians would answer this latter question in the negative, and of the others very few would suggest that, in practice, an obligation of restitution should be imposed.[7] And this remains true, it is generally maintained, even though the Customs

[1] Cf. Crolly, *De Justitia et Jure,* n. 1010, *et seq.* ; Génicot, *Th. Moi.,* i, n. 574 ; Davis, *Moral and Pastoral Th.,* ii, p. 339.

[2] Cf. Ballcrini-Palmieri, *Op. Theol.,* i, n. 327 ; Noldin, *De Praeceptis,* n. 315.

[3] It must be remembered that the variety is to a large extent due to the fact that the different authors have in mind, for the most part, the law as it exists in their own country. Cf. Genicot, Noldin, Davis, loc. cit., and Mcrkelbach, *Th. Mor.,* ii, n. 627.

[4] Cf. Prümmer, op. cit., n. 294, b.

[5] Cf. Jorio, *Th. Mor.,* i, n. 777, 779 ; Vcrmecrsch, *Th. Mor.,* ii, n. 367 ; Davis, loc. cit.

[6] Loc. cit. ; cf. Prümmer, loc. cit., d.

[7] Jorio, op. cit., n. 778 ; Davis, loc. cit. ; Aertnys-Damen, op. cit., n. 832. Prümmer, however, suggests that there may be an obligation of restitution-but he introduces an extrinsic reason : ' Etiam videntur teneri ad restitutionem . . . praesertim si per fraudationem continuatam mercium ahis mercatoribus notabile damnum causaverint,' loc. cit.

officials may be deceived by false statements in regard to the possession of contraband goods.[1]

The Customs officials arc bound by contract to exact the specified taxes. If they culpably fail to do so, they arc *ptr st* guilty of sin—and of grave sin if the matter is grave. They arc guilty of a violation of strict justice and arc bound to make restitution to the State.[2] Smugglers, and all who bribe these officials to neglect their duty and to allow contraband goods to be imported, likewise sin against strict justice—at least by co-operating in the injustice committed by the officials—and are bound to make restitution if the officials fail to do so.[3]

Even those theologians who maintain that tax laws are purely penal and impose no direct obligation in conscience, admit that whoever violates these laws is bound, if the violation is discovered, to accept the penalty imposed.[4] The penalty for the evasion of indirect taxes very often takes the form of a fine and the confiscation of the contraband goods. The fine and the goods thus confiscated become the property of the State. Hence to remove the goods secretly from the custody of the State and réassumé ownership of them, far from being any licit form of occult compensation, is a violation of strict justice, is simply theft and, of course, involves the obligation of making restitution to the State.[5][6]

In the light of the foregoing theological principles let us consider the case of Caius. He is guilty of the gravely sinful practice of studied and persistent evasion of indirect taxes.' Presumably the purpose of his gifts of tea was to bribe the Customs official to allow contraband goods to pass. Thus, by this bribery, he is guilty of a violation of strict justice as he is also by ' recovering ' from the Customs shed the tea which had been justly confiscated. For both violations he is bound to restitution. Moreover, Caius disposes of the smuggled tea in Dublin at what is manifestly a grossly unjust price. The selling price of a commodity is sometimes fixed by law or governmental order. When there is such a legally fixed price the

1 Cf. Jorio, loc. cit ; Merkelbach, op. cit., n. 630, G. ; Lehmkuhl, op. cit., i, n. 985. Yet if these statements are lies and not instances of mental restriction they seem to us to be unjust means.

2 Cf. Davis, op. cit., p. 540; Noldin, op. cit., n. 317 ; Aertnys-Damen, op. cit., n. 833.

• Merkelbach, loc. cit. B. ; Jorio, op. cit., n. 777 ; Noldin, loc. cit.

• Cf. Jorio, op. cit., n. 778.

6 Merkelbach, loc. cit., writes : ' Commutativam iustitiam illi laedunt . . . a fortiori qui tributa aut muletas *iuste* percepta vi eripere conantur et occulte sibi compensare, quia bona a Statu iam fuerunt iuste acquisita et fuerunt facte sua.'

• These texes, at least in the main, must, in Ireland, be regarded as just.

vendor is bound in conscience and in commutative justice to observe it[1]—unless it is manifestly unjust. But in charging much higher prices he is guilty of a further very serious violation of commutative justice and is bound to make restitution to the customers whom he has wronged.[2] We fear that profiteering in Black Markets, like that attributed to Caius, becomes common in time of war or emergency, and attempts are made by interested parties to justify it on the grounds that the conduct of business is rendered more difficult, that commodities are scarce, that purchasers are in need of them and are willing to pay. We need hardly say that none of those reasons can justify such profiteering[3] which is, beyond any shadow of doubt, a violation of strict justice and a particularly antisocial and mean violation at that.[4]*

THE JUST PRICE OF STORED TEA

I am a private individual and I have stored plenty of tea according to the past orders of the Government. My neighbour cannot get sufficient tea for his own use. He offers me ten shillings per pound (the legal price is four shillings). If I take the money and give the tea do I act unjustly ? I know I violate the legal price and many moralists hold that it binds in justice and under pain of restitution. Are there any exceptions ?

KIERAN VS.

The price of a commodity which is determined by law or by governmental order is called the legal price. It is mathematically fixed,[5] generally as a maximum retail price for a certain species and quantity of goods. The legal price is the just price. It is therefore, *per se,* a violation of commutative justice to charge more than the legal price for the specified commodity. This violation involves the obligation of restitution to the extent of the overcharge. This is the accepted

[1] Cf. Prümmer, op. cit., ii, n. 296; Vermeersch, *Th. Mor.,* ii, n. 341.

[2] Ita omnes, cf. St. Thomas, *S.T. 2,* 2, q. 77, a. 2.

[3] The first two reasons mentioned might, indeed, justify some increase in price. They would, however, justify departure from a legal price only if this latter were, in the particular circumstances, manifestly unjust. The presumption must always be that in fixing a price, all the relevant factors and circumstances are taken into account by the controlling authority.

[4] On the general question of Profit and Profit Rate, cf. Lucey, *Irish Ecclesiastical Record,* October-November, 1941.

[5] In this it differs from the common price which depends on so many factors that it is, as a rule, impossible to define it mathematically.

teaching of *all*[*] and not merely of *many* Catholic moralists. Our correspondent asks if there are any exceptions to the binding force of the legal price. In other words, are there circumstances in which a vendor would not be bound to observe the fixed price? The moralists generally enumerate three cases of such exceptional circumstances. A vendor would not be bound to observe the legal price firstly, if, changed conditions have made it manifestly unjust; secondly, if the commodity sold were of greatly superior quality to that for which the price was fixed, or, finally, if the price regulation were commonly ignored and the Government does not intervene to enforce its observance.

Now, it is clear that the sale of tea, in the circumstances of the case outlined by our correspondent, cannot be included under any of those exceptions. The fixed price of four shillings per pound cannot be said to have become manifestly unjust. Conditions have, indeed, changed. Tea has become very scarce. But this change does not effect the price of stored tea. The main extra charge on such tea (extra, that is, over and above the purchase price plus a reasonable profit), is the cost of storage. In controlling the price it must be presumed that the departmental authorities took all the factors into account.[2] The price is subject to constant review. It cannot be said that the tea of which there is mention in the query is of much superior quality than that for which the price was fixed. The Minister of Supplies, in fixing a price for tea, was well aware that a considerable amount of this commodity, of various qualities, was stored by merchants and by private individuals. In the light of that awareness a *maximum* retail price for tea was determined. And the warning was added[3] that 'certain packet teas of well-known proprietary brands are available at prices below the above (fixed) price, and consumers should ensure that excessive prices are not charged for these teas.' Finally, though there is a considerable amount of profiteering in tea, no one can assert that the Government is ignoring these violations of the legal price.[4]

In selling the tea at ten shillings per pound the vendor, in the case we are considering, is guilty of a violation of strict

[1] Cf. St. Thomas, *S.T.*, 2, 2, q. 77, a. 2; St. Alphonsus, *Th. Mor.*, l. 3, n. 803; cf. also Cronin, Prümmer, Merkelbach, Gcnicot, Lehmkuhl, Noldin, Jorio, Davis, Slater, Aertnys-Damen, etc., ad. loc.

[2] Cf. Cronin, *The Science of Ethics*, ii, p. 317.

[3] Cf. Price Orders, issued by Department of Supplies.

[*] There have been many prosecutions for exceeding the legal price.

justice and is bound to restitution to the extent of at least[1] six shillings for every pound weight thus sold. Of course it may be claimed here that the extra six shillings is not given as a price but as a gift. And there is no denying that any customer is entitled to make a gift to the vendor—but then there is question of a new and different kind of contract. It is no longer a case of buying and selling with which we are concerned here. Our point is that a charge of ten shillings is, in the circumstances, manifestly unjust as the price of a pound of tea—unjust, we repeat, to the extent of at least six shillings. It may be suggested, in justification of the vendor in the case, that the governmental order fixing the price of tea applies only to the rationed amount of tea to which the individual is entitled. In our opinion such a suggestion is entirely without foundation. It was well known that considerable stocks of non-perishable goods were laid-in by merchants and by private individuals. In fact the Government repeatedly advised the laying-in of such stocks. The purpose of a legally fixed price is to protect the consumer from overcharge, especially when these commodities have become generally scarce.[2]

Those who, like the man in the case we are considering, have goods stored which were purchased at normal prices have no just title whatsoever for exceeding the legal price. This price was fixed, not haphazardly, but in the light of the original prices paid, changing circumstances and the cost of storage of the particular goods. It is a received moral principle that a vendor is not entitled to make an extra profit for goods sold simply by reason of the consumer's need of them.[3] This need does not belong to the vendor and he may not claim a price for what does not belong to him.[4] There is, then, a violation of the above moral principle at the root of most profiteering. Those who are guilty of that vicious antisocial and unjust practice exploit the scarcity of commodities and

[1] We say 'at least,' because four shillings may be more than a just price for some brands of tea.

[2] We do not by any means intend to suggest that the power of the Government to fix prices may be used only in relation to goods which have been stored. *De facto* it is used much more widely, and rightly so in some circumstances. But we are dealing here with a case in which the goods were stored before they became scarce.

[3] This principle is invoked more particularly, perhaps, when there is question of the common price. The legal price is intended precisely to forestall the possibility of the vendor taking advantage of, and charging for, the consumer's need in certain circumstances.

[4] Cf. St. Thomas, op. cit., 2, q. 77, a. 1; St. Alphonsus, op. cit., nn. 806-7.

particularly the needs of the consumer and, as it were, sell even this very need back to the customer at an usurious profit. The profiteer does not deprive himself of something he specially needs. He has no just title for his huge profits. Ile sells in the blackest of black markets. He charges for what is not his own, often it is the pitiable need *of* the poor ; and he puts his own price upon it. He is, especially in times of emergency (he could hardly thrive so easily in other times) guilty *of* a heinous crime before God and man. Even apart from any fixed prices, such profiteering is unjust. In the face of legally-controlled prices it stands forth as manifestly unjust—and one might almost say doubly unjust—for it is unjust on two counts. The purpose of the order controlling prices is to combat this profiteering and thusj as we have said, to protect the consumer. And it is, to our way of thinking, a great pity that the purchasing public does not co-operate more closely with the Government in stamping out what is a very grave moral and social abuse.

A shopkeeper may allege that he cannot maintain his business as a going concern unless he has a big margin of profit, and that he is forced to charge prices far in excess of the legal price. But surely he is not entitled to commit injustice even if that *is* necessary to save his business. The legal price is the just price, as we have explained. Or is it suggested that any price which is necessary to keep a business going is *eo ipso* just ? A shopkeeper is not justified in raising prices at will to meet his needs. He is not justified in extracting from his customers for his goods the price which he considers necessary for the maintenance of his business. He is no more entitled to do that than he is to put his hand into a customer's pocket and steal a sum of money equivalent to the overcharge. And what shopkeeper would maintain that he could justly do this latter to keep his business going, even to keep a big number employed ? The end does not justify the means.

Our correspondent seems to emphasize the fact that in the case the vendor is a private individual. This, again, in our opinion, makes no difference. To exceed the legal price (apart, of course, from the recognized exceptions enumerated above) is equally wrong for a private individual as it is for a registered retailer. The legal price is the just price of the specified commodity for all vendors. Profiteering, of which exceeding the legal price is only one form, is unjust whether it be indulged in by a private citizen, a registered retailer, a wholesaler or a manufacturer, whether the enterprise concerned is controlled by an individual or by a company.

THE LEGAL PRICE

All admit the legitimate influence on prices of (1) supply and demand, and (2) the need for traders to make a living.[1] There is no need to labour this. We see these factors working in normal times. Rare commodities are dear. The price of foodstuffs varies with good and bad harvests. Industries scale their prices so as to give a living to all concerned in them.

The just price is that which is determined by these and other factors and regarded by *communis aestimatio* as fair ; or, when it exists, that determined as just by legitimate authority (*pretium vulgare* and *pretium legale*). It is manifest that the legal price, if it be just, must take account of all the factors that normally regulate prices, and that accordingly it should approximate to the common price that would exist in its absence.

The following reasons could be adduced to show that the price orders in force in an emergency are not intended to lay down, and do not in fact lay down, just prices.

(1) It is commonly held that the purpose of the price orders is not to secure commutative justice between buyer and seller, but to secure the ultimate common good, namely, to prevent inflation. (We shall have an example later of a different requirement of the public welfare which seems to have dictated a particular price-order.) It seems incontestable that this is the main and over-riding object of price-orders, and that the question of the adequacy of prices is not allowed to conflict with this object. The fact that these orders cause peculiar hardship to some at present, and that they will certainly prevent public evils (inflation and its consequences) in the future, is a strong indication of the purpose behind them.

(2) In fixing these prices the authorities obviously did not take into account the forces that normally help to determine prices, namely, supply, demand, and the need for traders to make a living. It would seem rather that for the public good they stopped these forces operating. This also shows that their intention was not to fix an adequate or just price. (The term 'just price' here becomes ambiguous. The price thus fixed is not an unjust price in the sense that the Government has acted unjustly. It is an inadequate price imposed for the common good. I will use 'just price' hereafter meaning 'adequate price,' as it normally means, having disclaimed the implication.)

(3) As a result of these orders the fixed price differs enormously from what the *pretium vulgare* would be if the ordinary laws of commerce were allowed to operate. (Apart from profiteering or any injustice, the prices of scarce things would have been put up by the action of demand and by the legitimate action of traders trying to make good their lost incomes, as is actually happening at present in the drapery trade.) This would not be so if the prices were fixed

[1] Cf. Genicot, *Theol. Mor.*, De iusto pretio.

as just prices. The following examples will make the above points much clearer.

Take the case of the tea merchant. His supplies dwindle to one quarter, or less. Normally, and without any injustice being done, the price of tea would grow much higher by the operation of the factors cited above. But the Government fixes the price at normal. (The margin of profit allowed is less than normal.) For the common good it stops economic law from legitimately operating. The value of the commodity has increased, but the price has been artificially kept down. (It is disputed what exactly constitutes value. The best view regards the value of a commodity as its exchangeworth among other commodities, determined by common estimation. In that view the value of tea has certainly gone up. People are quite willing to pay far more than the former price for it if they can get it. We shall see a clearer case of increased value when we discuss the price of bicycles.) The purchasing power of the currency is preserved and the common good thus secured, but the income of the tea trade has been reduced to less than one-quarter, much less in fact. The purpose of the price order is manifestly not to fix a just price or to secure commutative justice between citizens. It would be much easier to show that it creates injustice.

Again, owing to the shortage of transport facilities the value and the price of a horse-trap have at least doubled. And so, *a fortiori,* has the value of a bicycle. (The epidemic of stealing them is a sinister proof of this.) But the price of the bicycle was made to stand still. Anyone must confess that the real value of a bicycle is now much greater than that indicated by the fixed price. The price is artificially kept down and the bicycle trade forced, for the common good, to bear the financial burden of the shortage, a burden which would otherwise be distributed over the community, thus promoting public evil.

An example strictly parallel to the above two is very telling. The Government fixes the price of pigs and controls the sale of them in order to discourage production and thus have more potatoes for the people. (Even if it is contended that this did not happen, the argument is the same. It might legitimately happen, and the object of the order stands in the same category as the other object adduced, the prevention of inflation.) Would not the fixed price in this case be more like an unjust than a just price ? Certainly the more unjust it is the better will it secure its object. Let us say that I evade the control and buy a pig from a farmer at a price ten shillings higher than the fixed one. I confess that both of us are doing a wrong to the community, but I cannot see in what way the farmer is doing a wrong to me. In fact I cannot help thinking that I have come better out of the transaction than he has. His pig is almost a luxury commodity, but for the common good he is prohibited from getting luxury prices. The purpose of such a price order is manifestly not to state a just price, nor the effect to secure one.

If I buy a pound of stored tea at ten or even twelve shillings, or a bicycle or a pig at a price in excess of the fixed one, I know that both the seller and I are acting unsocially and violating law, but I certainly do not think that I have been wronged. And I think I can state that the general opinion among the people is that ten or twelve shillings per pound for stored tea is not unfair, and that any price for smuggled tea is fair if it does not show an excessive profit. And so with other scarce commodities.

Now these ideas of the people might be put down to ignorance of the theology of the just price. But that would be quite unfair, because the theology of the just price rests largely on common conscience. Are not the people's ideas rather a rough deduction from the ordinary laws that regulate prices ? In other words does their opinion not give us the *pretium vulgare* ? And should not the just legal price approximate to the *pretium vulgare* if its purpose were to indicate a just, adequate price ?

It is true that all theologians hold that the legal price binds in commutative justice, and that they explicitly adduce prices fixed in war time as an example, and that they may even mention the common good as the object of such price-orders. But I respectfully suggest that there is a vital difference between the fixed price as they envisage it, and our fixed prices. They seem to regard the Government as performing the same function, when it fixes prices, that is performed by the *communis aestimatio* when it fixes the common price. In fact they justify the binding force of the legal price on the grounds that the authorities are in the best position to know what is the just price, all things considered. (That is the only ground on which it can be claimed that the legal price binds in *commutative* justice.) In the case of our fixed prices the authorities, instead of allowing for the factors that control prices, prevent these factors from operating. That is partly their object. It is unfair in the sense that it causes hardship to some, but it is necessary for the common good.

Is it not tenable then that the legal price contemplated by the theologians is radically different in conception and object, from our anti-inflation, stand-still prices, which treat the justice, or adequacy, of the price as a secondary matter ? If so, it would follow that an infringement of a price order would be an offence against legal, not commutative, justice. This verdict would fit in admirably with the *communis sensus fidelium*.

Sensus Communis.

Before commenting on the foregoing letter, we wish to thank the very many correspondents who wrote to us in reference to our reply on the 'Just Price.' Strangely enough, the majority wrote merely to express their entire agreement with the opinions we had held. Some correspondents, while conceding that the views we held were sound in theory, suggested that it is

inopportune and unwise to lay emphasis on them just at present. Many people, it is contended, arc not aware that the legal price binds in strict justice, and it may be harmful to disturb their good faith. We were not asked, in the earlier question, to give a reply on this question of disturbance of good faith. We were asked about the injustice involved in exceeding the fixed price for a specific commodity, in particular circumstances. The further question has now been raised, incidentally. There arc, indeed, matters in regard to which, and circumstances in which, those who materially violate the moral law may be left in good faith. But here, in the admission of the correspondents who raise the point, there is question of a serious violation of social and commutative justice. In days of stress, sacrifice and shortage of commodities, this crime of gross overcharging cries to heaven for vengeance. It echoes around us in such times, and the common good, innocent third parties arc being injured. And we submit that this is not a matter, nor arc these circumstances in which those responsible should be left in good faith.[1]

We have given above a long statement by a correspondent who asked for publication ' as the question of fixed prices is causing great uneasiness among the clergy,' to quote his covering letter. We did so in order that those interested may have the opportunity of considering the arguments for an opinion other than that held by us. This correspondent asks for our comments. In giving them we shall for the most part follow the order of his statement. But we must first make some more general remarks.

Our correspondent holds, by way of conclusion, that an infringement of a fixed price order is an offence against legal justice only. But we presume that he admits that legal justice binds in conscience ; that it binds under pain of mortal sin if the matter at issue is grave. And the matter at issue will surely be grave if there is serious or frequent evasion of a fixed price order. Thus, those who frequently and seriously evade a price order are, even in our correspondent's view, guilty of grave injustice against the common good. There is, of course, in his view, no obligation of restitution. But a serious wrong is done to the community, and such a wrong, in times of short supplies, is, we again submit, a heinous social crime. Our correspondent can only deny this conclusion by giving a new meaning to legal or social justice.[2] But perhaps he does so. He certainly suggests

[1] Cf. Genicot, *Th. Mor.,* ii, n. 359 ; Aertnys-Damcn, *Th. Mor* ii n 437

[2] Cf. St. Thomas, *S.T.,* 2, 2, q. 58, a. 6; Encyclical *Divini Rfiinblvru'* English translation, p. 24.

a new meaning for legal price and his use of the term 'just price' is confusing, despite his explanation and disclaimer. Surely our correspondent docs not implicitly suggest, in the name of common sense, that a heinous social crime be palliated or condoned. His letter left us wondering.

Coming to the earlier portions of that letter: the order in the second paragraph is interesting. The legal price is adroitly relegated to a secondary place. Yet all the theologians consider it first and then continue *deficiente pretio legali servandum est pretium vulgare.* In other words, it is only when there is no legal price that the question of the common price arises at all. Our correspondent seems to forget, or to ignore, this fact. He resorts immediately to the factors by which the common price is determined. Even here he seems to forget that supply and demand can only have a *legitimate* influence in determining the common price when the market is free. Genicot, invoked by our correspondent, writes:[1]

> Deficiente pretio legali iustum habendum est pretium commune. Ratio est quod quantum fieri potest illa communis aestimatio in *adiunctis liberae et legitimae concurrentiae apte repraesentabit valorem venalem.* . . .

Our correspondent says: 'it is manifest that the legal price in order to be just must take account of all the factors that normally regulate prices . . .' Not only is this not manifest, it is not even true. In fixing legal prices the civil authority need not, does not, and sometimes should not, take into account the factors of supply and demand. Often it is precisely because commodities are in short supply—the demand remaining at least constant—that the authorities intervene to fix a minimum price. When supplies are normal, and the market free, competition will, as a rule, force down prices to a reasonable level. In the absence of either of these conditions prices will rocket. And it is principally in such circumstances that a system of price control has its protective value—a value which our correspondent would apparently deny to it.

A number of reasons are adduced to show that the price orders are not intended to lay down, and do not in fact lay down, just prices. Regarding the first point, the *intention* of the authorities, our correspondent relies on certain presumptions. Against these we place the assurance which we have had from the appropriate department[2] that the purpose of the price orders

[1] Op. cit., i, n. 633, italics ours; cf. Cronin, *Science of Ethics,* ii, pp. 316-7.

[2] Neither here, nor subsequently, are we concerned to make an *apologia* for a Government department. We are concerned with facts and moral issues.

is not merely to prevent inflation, but primarily to determine a just price—a price that will give a fair profit, that is to say, a price which will provide 'reasonable remuneration for proprietors' services, plus a fair return on capital, after providing for all costs and expenses.' In the ease of small proprietors it is realized that it is only the factor of reasonable remuneration for services that will enter. Wc must remark, in passing, that the suggestion that the over-riding purpose of price-fixing is the common good, by no means implies that the fixed price does not bind in strict justice. On the contrary. Wc have the assurance of the appropriate authority that the intention was to fix a just price. Any *presumptions* regarding *intention* must surely cede to that assurance.

Regarding the *fact:* our correspondent says that the authorities obviously[1] did not take into account the factors which normally help to determine prices—supply, demand, the need of traders to make a living. They did not take supply and demand, in regard to some commodities, into account for the obvious reason that these factors had ceased to operate in the ordinary sense. Demand so far exceeded supply that the market was no longer free—no more free than if a hundred hungry men wanted to buy the one available loaf of bread. There was question of securing that this excess of demand over supply did not operate to the detriment of the purchaser—especially the poorer purchaser. Therefore again, obviously, the legal price differs from the price that would be charged if vendors were allowed to use the scarcity of commodities to force up the price. The enormity of difference only serves to confirm our point. Wherein precisely would lie the value of price-fixing if it merely followed, and accommodated itself to, the common price in the circumstances when supplies of essential and quasi-essential commodities are only a fraction of the demand? In the example given above—one loaf, a hundred hungry men clamouring to buy it—do the laws of supply and demand operate in the ordinary sense? Should the authorities consider these factors in this case before fixing a price? Is this bread-market free?

Against the suggestion that the authorities did not take into account the need of traders to make a living we recall the assurance given above. Apart from that consideration, surely it would not be in the interest of the common good to reduce to penury, or worse, a whole class of people like traders, who

[1] In his final paragraph, he seems to suggest that the authorities did consider the adequacy of the price—but only secondarily.

render an important service to the community. It is unlikely that the authorities did not appreciate this point. If they did not, how can our correspondent claim that price-fixing redounds to the common good ? It is true, of course, that the turn-over of traders is greatly reduced by reason of shortage of supplies. And reduction of turn-over implies loss of profit. But to counteract this an increased margin of profit, on the quantities available, is provided for in the fixed price. Our correspondent says that the margin of profit on tea is less than normal. We have been informed, on good authority, that this is not so and, recently, as a result of representations made by the Retail and Wholesale Protective Association, the margin of profit on tea has been further increased by eightpence per pound—sixpence of which goes to the wholesaler, twopence to the retailer. It is not suggested that the fixed price *is* so determined that it allows a margin of profit which offsets completely the loss of profit consequent on reduced turnover. If it be maintained that the fixed price *should* be so determined, then there would be no equality of burdens in the community ; and, further, it would follow logically that a retailer of tea, who could only get a pound of tea per week, might charge, for that quantity, whatever price would leave him a profit equivalent to that which he had when supplies were normal—say £3 per week. The example is extreme, but it illustrates the conclusion to which the above contention would lead. There is one other point which we may mention in this connexion : It is a well-known fact that certain goods, like butter and sugar, are known as carrying commodities and that the traditional margin of profit allowed on these is very small. It is true that this tradition has not been altered,even though stocks have been reduced.

The words ' in a free market ' at least should be added to our correspondent's definition of value. He says the legal price is not unjust (in one sense) . It binds in legal justice, presumably in conscience, that is, under pain of sin. But it would be easy to show that it causes injustice. Certainly, the more unjust it is the better will it secure its object ! When, then, we buy a pound of tea, a bicycle or a pig for the fixed price, it is easy to show that our action causes injustice to the seller—for the price is more like an unjust than a just price. The effect of the price order is manifestly not to secure a just price. At the same time if we pay more than the fixed price we violate social justice, we wrong the community, we injure the common good, we promote public evil. *Quis liberabit nos ?*

It is indeed true that the fixing of prices forces certain groups

to bear a share of the financial burden created by the dearth of various commodities. It is the duty of the State[1] to work for the common good, to prevent public evil, to distribute the burdens as equitably as may be possible. But how does the fulfilling of these duties imply that the fixed prices do not bind in strict justice? The argument should rather go the other way round.

Our correspondent appeals to the common opinion of the people. The general opinion of the members of the purchasing public with whom we have come into contact, in cities, in towns and in rural areas, has been that ten or twelve shillings per pound for stored tea is grossly unjust. Times without number we have heard them inveigh against the injustice of those who took such advantage of their pressing needs to make an exorbitant profit. Does our correspondent really think that the ordinary wage-earner regards twelve shillings per pound for tea as just—tea which was bought, as he will wistfully remind you, at less than three shillings per pound? Or does the workman who badly needs a bicycle to carry him to his distant work regard £15 as a fair price for a machine bought a short time previously for £6? The bicycle has, indeed, an increased value for this worker (heretofore, perhaps, he could get to his work by bus). But this increased value does not arise from anything the vendor has done. It arises from the worker's need—and his need, cold comfort though it be, is at least his own. Yet some would sell it to him! We have a newspaper report of a case of over-charging before us. The evidence was that tea was being sold at Is. 3d. per ounce to the poor of a Dublin slum area. Supplies were short. The need was great. Demand was keen. There was a queue outside the shop. The price was paid. But was it paid freely, in any real sense of the word? or out of sheer necessity? Was it regarded as a fair price? Does our correspondent even remotely imagine that it would be regarded as a fair price if it were known that the tea was purchased at about an eighth of the price charged? And this is our point: will our correspondent deny a voice to these poorer citizens, whose number is legion, when he comes to estimate the common opinion of the people? We have mentioned only members of the purchasing public, but it is only fair to add that we have first-hand evidence for saying that many vendors make no secret of the fact that they regard ten or twelve shillings per pound for stored tea, or £15 for a bicycle which cost £6 as absolutely unjust. It would be interesting to know if our

[1] Encyclical *Quadragesimo Anno,* English translation, p. 22 et seq.

correspondent would set any limit, in commutative justice, to the just profit rate in commodities which are scarce—or more particularly, almost impossible to obtain at present—and if he would, at what point ? Whom would he choose to decide the point for the public ?

Our correspondent is faced with the unanimous teaching of the theologians that (apart from recognized exceptional circumstances which he does not invoke) the legal price binds in commutative justice. They tell him that the object of price fixing is the common good ; that prices were frequently fixed in times past ' praesertim in favorem ementium et in rebus ad victum necessariis, ne eas pretio immodico comparare cogerentur ' ; that, nowadays, prices are fixed principally in time of war. In order to avoid the obvious conclusion that the fixed prices, in force in this country, bind in commutative justice, he denies that our fixed prices are legal prices. He advances arguments to prove the truth of his denial. It seems to us that he might profitably have asked himself why the theologians refer explicitly to price-fixing in time of war ? Could it be that it is because they consider that in such a time the factors which normally determine price may not operate freely, and that consequently, in the absence of official price control, a broad and easy way would be open to the profiteer and black marketeer, but for the poor the rugged road of exploited needs ? We have commented on many of the points made by our correspondent. There are many more comments which we might make, but time forbids, and we have already transgressed in the matter of space. Our correspondent has failed, we think, to prove his contention that our fixed prices are not legal prices, in the sense of the theologians, and that they do not bind in strict justice. Our readers have the arguments : they, if they wish, can decide for themselves. In our opinion, the contention of our correspondent is not merely unproven, it is not true. We have found nothing in his contribution which compels us to alter in any way the opinions we expressed in the previous reply.

COMMUTATIVE JUSTICE AND THE PRICE OF SMUGGLED TEA

I would be very much obliged if you would answer the following question. You have partly covered the case already, but an explicit treatment of it would be appreciated by a large number of my clerical friends.

(1) Is commutative justice violated in the following case ? A

person purchases a certain commodity (tea) in Northern Ireland at, say, 3s. (*sd.* per pound. He next smuggles it down 'south of the border' and sells it at, say, 14s. per pound, saying to himself: 'I am justified in charging the excess, on account of the *risks* run in bringing it down south.' Or the commodity is brought down for him by another person who charges a considerable sum for doing so—and this is looked upon by the original purchaser as a title for selling the tea beyond the legal price fixed in the Republic. What if the purchase price of the tea plus money paid for safe transport should amount to say 7s. per pound? Is there a title for exceeding the legally fixed price.

Zosimus.

In an earlier reply we have dealt very briefly with the question of evasion of indirect taxes. In that context we mentioned the various views expressed by theologians on the nature of the obligation to pay these taxes.[1] The difference of opinion on the precise nature of the obligation, on the manner of its impact on conscience—so to speak—has tended to obscure certain fundamental principles on which the moralists are agreed. Before dealing with the particular points raised by 'Zosimus' in his first query, it may be well to outline some of these principles. We must recall that the legitimate civil authority, which is the juridical guardian of the common good, has power from God to make laws which are binding in conscience, and that, in turn, the citizens *are* bound in conscience, directly or indirectly, to obey the just laws of that authority.[2] The principles of authority, of respect for legitimate authority, and of obedience to its just ordinances, are rooted in the natural order, are expressed in the law which is written in the hearts of men, are reiterated in Revelation and in the positive teaching of the Church. As an illustration of this teaching, and as not altogether irrelevant to the matter of the query under consideration, the following Instruction of the Congregation of Propaganda is of interest. The Instruction was given to the Vicar Apostolic of Siam in reply to a query as to the binding force in conscience of a law which prohibited traffic in opium. The reply runs[3]

Christianos teneri ad observantiam civilium legum, etiamsi istae latae fuerint a principibus infidelibus, dummodo istae christianae religioni et

[1] We noted that the variety of opinion is due to a large extent to the fact that the different writers envisage the conditions and laws of their own country.

[2] St. Thomas, *S.T.,* 1, 2, q. 96, a. 4, 2, 2, q. 104, a. 6; Cronin, *The Science of Ethics,* ii, chs. xv, xvi; encyclicals of Leo XIII, *Diuturnum* (1881), *Immortale Dei* (1885); Lehmkuhl, *Th. Mor.,* i, n. 797; Merkelbach *Th. Mor.,* i, nn. 267-92.

[3] Coll, de Prop. Fide, n. 815; cf. Merkelbach, op, cit., n. 284.

morali evangclicac non opponantur, nullus est dubitandi locus : nullumque dubitationi locum relinquit Apostolus, qui nulla facta inter sublimiores potestates distinctione, inquit : 'Omnis anima potestatibus sublimioribus subdita sit : non est enim potestas nisi a Deo. . . . Itaque qui resistit potestati, Dei ordinationi resistit : qui autem resistunt, ipsi sibi damnationem acquirunt. . . . Ideo necessitate subditi estote non solum propter iram, sed etiam propter conscientiam.' Ex hoc apertissimo testimonio manifestum est, summos in civili gubernio imperantes suis subditis ferre leges posse quae eos etiam in conscientia obligent : quod ratio enim suadet boni publici, arcendi scii, a civilibus societatibus anarchiac monstrum cane peius et angue : et praeclara commendant exempla primorum christifidelium, qui civilibus gentilium principum legibus obtemperarunt, quousque sine fidei bonorumque morum dispendio id facere potuerunt.

The attempt to divorce civil authority from subjection to the moral law is one of the most lamentable and lamented features[1] of the modern break from Christianity. The attempt seems to us to have a certain counterpart in the growing tendency to deny any moral binding force to just civil law. Perhaps the first faint beginnings of this latter tendency may be traced to the invention in the late fifteenth century of the purely penal law. But whatever the origin of the tendency, morality and the prestige of civil law have suffered. And it is most disturbing to see to-day how widespread is the challenge to religious and legitimate civil authority.

Theologians are not unanimous as to the nature of the obligation to pay taxes to the legitimate authority—some say it is an obligation in strict justice, others in legal justice ; others again hold for an indirect obligation in conscience. But behind that variety, and unaffected by it, we have the principle, accepted, with one voice, by Catholic theologians from the time of St. Justin Martyr[1] to the present day, that *just tax laws bind in conscience.*[3] We must render to Caesar the things that are Caesar's. The State has the right and duty to maintain its existence. It has the right to demand from its citizens what is necessary for this maintenance. And the citizens have the duty to give in due measure. Again, however theologians may differ regarding the precise nature of the obligation of tax laws, they agree that one who makes a profession of evading taxes, direct or indirect, is guilty of grave sin.[4] Thus

[1] Cf. Encyclical *Summi Pontificatus* (1939), Pius XII.

[2] Cf. *Apologia I pro Christianis* ch. xvii. 'It is our special care to be the first of all to pay our taxes and dues to those whom you have commissioned to receive them, as we have been instructed to do by Him (Christ).'

[3] Cf. St. Thomas, op. cit., 2, 2, q. 87, a. 1 ; Billuart, *De Just.,* d. a. 7 ; St. Alphonsus, *Th. Mor.* l. 3, n. 616 ; *Catechism of Council of Trent,* p. 3, c. 8.

[4] Cf. Ferreres, *Th. Mor.,* i, 876 ; Jorio, *Th. Mor.,* i, n. 777, 779 ; Merkelbach, op. cit., ii, n. 630 ; Davis, *Moral and Pastoral Theology,* ii, p. 339 ; Noldin, *De Praeceptis,* n. 315 ; Prümmer, *Th. Mor.,* i, n. 294.

professional or frequent smuggling of notable quantities stands condemned as gravely sinful. There are many reasons for this view. Even prescinding from the aspect of evasion of taxes, such smuggling, we would say, normally is a gravely sinful practice. We are thinking of smuggling so highly organised as almost to constitute a business. And this smuggling is, in our opinion, not merely a gravely immoral but a gravely demoralizing traffic. It diverts young men from steady occupations. They are lured from an honest way of live by the hope of huge profits, of getting rich quickly. Their moral sense is perverted. Bribery, corruption of officials, threats, use *of* force, thuggery (all violations of commutative justice[1]) follow hard upon, indeed seem to be bound up inextricably with, every organized scheme of smuggling—as are deceit, disrespect for authority, for law, disregard of the duties of citizenship.[2] We have been told that the people in certain areas are obsessed by the smuggling mentality. We have heard of little children who, day after day, indulge in smuggling to the limits of their capacity. Perhaps it is the example of their elders, perhaps it is greed for gain, perhaps it is the thrill of evading the law and its custodians that urge them on in this practice. Whatever the cause, this addiction to smuggling must be regarded by all right-minded people as a very regrettable feature of life, and as seriously harmful to the character formation of the rising generation. We have heard how huge fortunes have been built up by smuggling in the space of a few months. One well might ask how far such fortunes can be acquired justly in a short space of time ; is not this huge fortune evidence of persistent overestimation of the risks in terms of money (even if one were to admit that a price may be charged for these risks) ?

There is still another aspect from which we may look at smuggling—an aspect which, we think, serves to emphasize its immorality. In time of war there will be question, for the most part, of smuggling goods which are rationed, or are in short supply. Let us suppose that a citizen were to smuggle a notable quantity of foodstuffs, which were in short supply, *oui of* his country—would any one deny that such an action, at such a time, would be a serious violation of social justice ? We can imagine how vehemently—and fairly—the wronged citizens would clamour for a just and adequate punishment of this

[1] Cf. Merkelbach, loc. cit. ; Noldin, op. cit., n. 317.

[2] Ferreres, loc. cit., speaks of those who 'per fas et nefas defraudationem veluti commercium quoddam exercent ' as ' cives rebelles et societati perniciosissimi.'

smuggler. It will be said, however, that smuggling *into* the country is an entirely different matter. But is it—when there is a question of smuggling in quantities of commodities which are in short supply in the other country? We cannot have it both ways. The citizens of other States also have their rights. And if it is wrong to smuggle out of a country goods which are scarce and badly needed by the citizens, it is wrong to co-operate in such activity. In estimating the morality of the smuggling traffic we must take into account the evils that are inherent in it, and closely consequent upon it, in the particular circumstances. Taking these factors into consideration, we repeat that organized smuggling stands out as a grave and gross violation of the moral law. It is a social menace: it is the centre and focus of an ever-widening circle of immoral consequences.

All the foregoing is mainly by way of introduction to a reply to our correspondent's query, as well as partly by way of fulfilment of a promise made to say something on the general question of smuggling. We come now to the question of the just price of smuggled goods. Following the example of our correspondent we shall consider the matter in terms of tea. The general principle can be laid down that *commutative justice* is not violated by one who sells tea for the price paid for it plus a just profit. To prevent any misunderstanding or wrong conclusions, we hasten to add that commutative justice is not the only virtue which governs the contract of sale. And this contract, while not violating commutative justice might be seriously sinful, might gravely violate social justice or charity. Let us take examples to illustrate the principle we have laid down. A man buys tea in Northern Ireland at 10s. per pound. He smuggles it across the border and sells it in the south at 10s. plus a just profit per pound. This man does not *per se* violate commutative justice in the sale of the tea.[1] But the obvious questions arise. What is a just profit in these circumstances? What, in particular, is the just profit per pound on smuggled tea? To answer these questions we think a distinction must be made between two classes of cases: the first class is that in which the vendor does the smuggling himself; the second is that in which the vendor buys tea which

[1] We take this price of 10s. in our illustration because the higher price will serve to illustrate a point to be raised later—namely the rate of profit. If the price of 10s. per pound were itself a violation of strict justice, then the buyer would co-operate in that injustice, and his co-operation would be a sin against commutative justice if he had conspired with the vendor to defraud the ultimate purchasers.

has been smuggled by somebody else. As this latter type of case is, in some ways, the simpler, we shall take it first. A buys smuggled tea from B at 10s. per pound. As we have said, A, without violating commutative justice, may sell each pound of smuggled tea at 10s. plus a just profit. And, in our opinion, the just profit, in the case, is that allowed by the State to the retailer on a pound of tea. That is to say, it is the difference between the wholesale and retail price of tea as determined by the appropriate fixed price order. In determining a fixed price for tea the State decides, in effect, the margin of profit for each pound of tea retailed—a profit which, it is considered, will provide the retailer with reasonable remuneration for services rendered. When we come to consider the obligations in commutative justice in regard to the selling price of smuggled tea, we must begin with the cost of purchase. *Ex hypothesi* it was 10s. per pound. To that we add a just profit for retailing the pound of tea. Suppose that the State has decided, in fixing the legal price,—and such a decision binds in strict justice—that 8d. per pound is the current just profit on a pound of tea. A, therefore, in this case, without violating commutative justice, may retail the smuggled tea at 10s. 8d. per pound.

The costs of retailing a pound of tea are somewhat similar—whether the tea be that legally obtained from a distributor or that bought from a smuggler. If it be said that in the latter case the vendor may undergo some risks, we reply that any risks there are, arise from the fact that the vendor has broken the law. He has violated social justice. He has undertaken, knowingly and willingly, whatever risks there are. We think he may not justly take a reward for this violation of law and social justice.

There remains for our consideration the class of case in which the vendor himself smuggles the tea. Again let us suppose that A buys the tea in Northern Ireland at 10s. per pound; that he smuggles it across the border and sells it in the south. And the question is: what may A charge per pound for this tea without violating commutative justice? And the answer surely is 10s. plus a just profit. No more. But what is a just profit in this case? Firstly, A may take the legal profit allowed on tea, as above. Moreover, the vendor in this case will have to meet transport costs not contemplated in the fixing of, and, therefore, not covered by, the legal margin of profit. We would then allow A to make an extra charge per pound to meet the *necessary transport costs.* We would not allow him to increase the retail price to cover the costs of bribery or corruption. These

acts, as we have noted, arc themselves violations of commutative justice—entailing an obligation to make restitution for any consequential damages.[1] We think that the vendor is not entitled to an extra profit simply because he invests a larger sum of money for the same real value. Nor is he entitled to put a premium upon risks knowingly and willingly run in violation of a serious law. To us it seems a strange travesty of the laws of justice to suggest, as some suggest, that those who indulge in the smuggling traffic should be paid a price, a very high price at that, for running risks which imply in fact the serious violation of the civil and moral law and the demoralization of our people.

Prices on the lines suggested, in our opinion, may be charged without violating commutative justice. To charge more would involve such a violation and the consequent obligation of restitution. It is, we think, manifestly unjust to charge 14s. per pound for tea bought at 3s. 6d. It is hardly necessary to add, in view of what we have written in our introduction to this reply, that, even when commutative justice in the matter of the price of smuggled goods is observed, professional smuggling remains nevertheless grievously immoral.

IS THE LEGAL PRICE A PURELY PENAL REGULATION ?

Would you please say clearly if one may hold that the fixed price regulations are purely penal enactments ? I have not seen that view stated anywhere, but I have heard it quietly suggested. If this view is tenable then I hold that it is grossly unfair to attempt to force any other stricter view upon the public. You, sir, have no right, moralists have no right, to manufacture moral obligations. I remember a text of Sacred Scripture about those who sit upon the chair of Moses. The Christian life is difficult enough. There is already ample opportunity for sinning.

Vendor.

In our opinion the view that the regulations by which prices have been fixed are purely penal enactments is not tenable. 'Vendor' concedes that he has not seen the view stated anywhere. Neither have we. Nor, we venture to say, has anybody else. The theologians unanimously teach that the legal price is the just price, and that it binds strictly in conscience. 'Vendor *t may have* noticed, that is, if he has made any

[1] Cf. Merkelbach, op. cit., ii, n. 630 ; Priimmer, loc. cit.

examination of the question, that the theologians, in discussing the just price, give pride of place to the legal price. The question of any other kind of just price arises only when no legal price has been determined by the governmental authorities.' The suggestion, be it quiet or otherwise, that the legally fixed price does not bind in conscience represents an absolute and, in our view, completely unwarranted break with this traditional theological teaching on the question of price. We are not surprised that the suggestion has been made quietly. He would, indeed, be greatly daring, we could say temerarious, who would publicly hold, against the unanimous tradition, that one is not bound in conscience to observe the legal price; that the fixed price regulations are purely penal. It is our view that the legal price not merely binds in conscience, but that it binds in strict or commutative justice. And here again we have only aligned ourselves with the traditional teaching. Another correspondent argued that an infringement of a fixed price order was an offence against legal, not against commutative, justice. Thus this correspondent held that the fixed price regulations beget an obligation in conscience—though not in commutative justice—a view which, it must be remembered, is very different indeed from that which states that these regulations are purely penal. We examined at length the arguments advanced in favour of what may be called the legal justice view of the fixed prices. We concluded that the arguments were not convincing, and that the view in support of which they were propounded was not correct.

We agree with 'Vendor' that, if it may fairly be held that the fixed price orders are purely penal enactments, then it is not fair for anybody to attempt to force any stricter view on any one. But we repeat that we do not regard the purely penal view of the fixed price regulations as tenable. And it is not within our province or competence to *force* any view on anybody. We have merely stated the traditional theological teaching on the point at issue. It gives us no pleasure whatsoever that this teaching is, or should be regarded as, very strict. If we considered that less strict views were probable, even though we did not agree with these views, we would gladly have mentioned them as tenable. We cannot understand the mental outlook of those who glibly assume that writers on morals gratuitously impose or aggravate moral obligations, and, what is even more reprehensible, that these writers take a macabre, a kind of

[1] The phrase 'deficiente pretio legali servandum est pretium vulgare,' or some such phrase, occurs in all the theologians.

sadistic, delight in doing so. We do not see the applicability of the text of Scripture referred to by our correspondent. Of course there can be arbitrary exegetieal suggestions as well as arbitrary theological suggestions. We feel that we could retort with much more pointed scriptural texts. We assure our correspondent that we have not the least desire, much less the right, to attempt to make the Christian life more difficult by multiplying its obligations, or in any other way. We hold firmly that sins, like the entities of Ockham's dictum, 'non sunt multiplicanda praeter necessitatem.' It would be a much more pleasant, as well as a more pleasing task, to ease the burden of the Christian life and to modify and minimize its obligations for oneself as well as for others—if that were possible. But our correspondent knows well that the life of the Christian was never meant to be easy. In particular it cannot be a way of self-aggrandizement at the expense of others. It cannot be a selfish way. The Christian is his brother's keeper. The Christian cannot forget that the vendee, no less than the vendor, has his rights as well as his burdens. But these added remarks, like most of those of our correspondent, are really irrelevant in view of our reply to his direct question.

OCCULT COMPENSATION FOR BLACK MARKET TRANSACTIONS

For the past three years I have been getting non-coupon or black-market tea from a local trader : the prices varied from 16s. to 24s. per pound. Just recently a considerable sum of money for the trader has come into my hands, and I am keeping most of it as occult compensation to myself for what he charged me over the controlled or legal price. For obvious reasons I cannot take him to court, and this is probably the only chance I shall ever have of compensating myself. That I have this money, or how much it is, he can never know unless in so far as I tell him. But with the past cleared I have still a balance in hands. I shall be glad to know if you approve my action, and if I may hold what I still have until the end of this year to cover my losses on the tea I shall be getting from him. The trader is wealthy.

P. T.

We feel sure that our correspondent is merely stating a case in the first person. We are replying in the same direct manner, but our remarks are obviously addressed to the 'P. T.' represented in the query and are not to be taken as meant for the writer personally.

We thoroughly disapprove of our correspondent's manner of action in the past, and of his suggestion for the future. And for many reasons. Theologians are sensitive *of* the dangers of abuse to which the institution of occult compensation is liable[1] and are, therefore, rightly reluctant to approve it when done in the past, and are much less reluctant to counsel it for the future.' Briefly, occult compensation is a procedure to which one may resort only when definite conditions are fulfilled.

Ut sit licita occulta compensatio hac conditiones requiruntur 1° ut debitum sit strictum et certum ; 2° ut debitum non possit aliter recuperari sine notabili incommodo ; 3° ut damnum debitoris aut tertiae personae praecaveatur.'

Our correspondent has apparently made no attempt to verify the presence of some of those conditions. To take the first and most important : he has blandly assumed (as far as we can see) that the trader bought the tea at the fixed wholesale price, and that, consequently, every penny in excess of the fixed selling price of 4j. per pound was strictly unjust profit—for which he, the purchaser, is entitled to restitution. That assumption may be true—but, then, it may not. Surely, ' P.T.' must admit the possibility that the trader paid much more than the fixed wholesale price for the tea ; and that, therefore, all the excess charged over the fixed retail price may not be a violation of strict justice. We do not know what the actual facts of the case are. We do not know how the trader acquired the tea, or what price he paid for it. Thus we cannot even guess what part of his profit is unjust. Neither, apparently can ' P.T.', and yet he equivalently removes calmly from the traders's pocket a sum of money to compensate himself for a debt the amount of which he may have completely misjudged. In fact, in a sense, his action is more reprehensible than if he removed the money from the trader's pocket or till, because, in holding up this money, he betrays a trust reposed in him.

Nor do we approve of our correspondent's supporting the black market and co-operating in what he chooses to regard—when it suits him—as violations of strict justice. He does not suggest that he was under any great necessity to buy in this market. He has apparently every intention of continuing to deal in it and[3]

[1] Cf. Noldin, *De Praeceptis,* n. 426 : ' Occulta compensatio per se illicita est, si tamen debitae adsint conditiones, licita fit. Ratio primi est, quia bonum commune exigit ut ad praecavendas inordinationes quae ex occulta compensatione facile orirentur, creditor petitione tum privata tum publica per iudicem rei suae possessionem recuperare studeat.'

[2] Occulta compensatio in praxi raro suadendum est praesertim quia imminet periculum abusus et hallucinationis,' Noldin, loc. cit.

[3] Prümmer, *Th. Mot.,* ii, η. 88.

of thus encouraging it- and he has taken means of indemnifying himself against future loss. There is no hint that he made even the slightest protest to the trader regarding his charges. Surely there are less extreme means than bringing the trader to court. Has he tried any of them ? It seems to us that ' P.T.' is one of those to whose support and general manner of action the black market, with its attendant evils, owes, in no small degree, its continued existence. He clearly wants to have it every way : he wants his rationed tea, his unrationed tea and his fixed price, by hook or by crook. His sense of justice is obviously outraged by the trader's violation of the fixed price order. That same sense is not nearly so keen when it comes to the question of compensation. Does ' P.T.' imagine that, if traders buy tea at 10$. per pound, they are bound in strict justice to let him have it at 4$. per pound ? He, of all people, does not seem to have any right to expect generosity or philanthropy of this kind. ' P.T.' is not even satisfied that he has, as he thinks, evened up with the trader for the past three years. No, he withholds, without right or title, the residue of the money which he has received in trust for the trader, to compensate himself for future black market transactions.[1] For a time at least he will be able to approach the trader for extra tea, righteously conscious that he has forestalled any injustice which will be done him in the matter of price ! Mildly, doubtless, he will pay over the black market price and confidently look the trader in the eye ! The latter, too, may fondly think he is doing well. He bought the tea at 10$. per pound. Over it goes to ' P.T.' for 20$. A tidy profit of 100 per cent. But, in view of ' P.T's.' foresight, it really means a more than corresponding loss. If only the trader knew his mild ' P.T.' ! Justice is justice, whether or not the trader is wealthy.

CO-OPERATION IN INJUSTICE

Paul is an assistant in a provision store and works under a manager. The latter, in order to keep his post, must show a certain minimum profit. Some of the goods are shown in the window with prices marked. Other commodities are those subject to a varying ' current ' price. The manager, a non-Catholic, asserts that he cannot reach the required profit if he merely charges the current price and the prices marked. He attributes his failure to wastage and other similar circumstances. He meets his difficulty by over-charging. He adds

[1] Occult compensation, in any circumstances, for debts not yet contracted, is regarded as unlawful by the great majority of theologians. Cf. Jorio, *Th. Mor.,* ii, n. 677.

a few pence either to the specific items or to the total amount of the bill and feels secure in knowing that most of his customers will not make a close examination of the bill. He instructs Paul to do likewise. Paul does not wish to give up a good position, but he is disturbed in conscience, especially as he signed a declaration not to overcharge. It may be mentioned that in no case is the excess so great as to exceed a just price. May Paul continue in his employment ?

Caius.

By way of introduction to our reply it may be useful to recall some of the principles which govern the determination of the just price in the contract of buying and selling. The just price of a commodity may be fixed by law. A price thus fixed is called the legal price. In regard to very many classes of goods, however, there is no legal price—in which case the just price will be what is called the common price or, in its absence, the price agreed upon by the parties to the contract. The common price is determined by general estimation in accordance with the laws of supply and demand. It may vary according to different circumstances. Accordingly we speak of a highest, of a mean, and of a lowest common price. The mean common price is often referred to as the 'current' price. The agreed price *(pretium conventionale)* only finds place when the object of the contract is not an object of ordinary commerce—and consequently has neither a legal nor a common price. The agreed price is just only if there has been no fraud or deceit.[1]

If there is a legally fixed price for a commodity there is an obligation in conscience and in commutative justice to observe it—unless it is manifestly unjust. If there is no legal price, then the common price must be adhered to, so that it is unjust to sell an object for more than the highest or to buy it for less than the lowest common price.[2]

In the query submitted we are told that the price is marked on some of the goods displayed. We are not told if this is a legal price. It may well be, and, if it is, it is clearly unjust to sell those goods at a higher price. The consideration of the common price would not arise in regard to goods for which a legal price has been fixed. But many of the goods for sale are subject to the common price. And it is stated that in no case, even when the excessive charge is taken into account, is more than a just price received. That is to say the highest common price—which is just—is not exceeded. But this price, while just, as it were, in

[1] Cf. Prümmer, *Th. Mor.,* ii, nn. 296-300.
[2] Cf. Merkelbach, *Th. Mor.,* ii, n. 517.

the abstract, may not be just in a concrete case.[1] It certainly is not just when it supervenes as an increased charge upon a contract already made for a lesser price, and is obtained, as it is by the manager and Paul, by unjust means. The customers here are deceived and defrauded. They buy goods for a clearly marked or stipulated price. As a result of the manipulations of the shop manager and Paul they pay a higher price.[1]

If A. has a horse worth from £90 to £100 and sells it to B. for £90, may he then take £5 from B.'s pocket on the principle that £95 is not an unjust price—which, *ex hypothesi,* it is not? Surely he may not. Nor would the fact that a debtor is urgently demanding £95 from him justify the procedure.

The manager may, indeed, say that the customers get just value for a just price and that, therefore, no injustice is done, and that the customers have no further strict rights. But they have. They have a strict right to the exact implementing of their contract. And they have a strict right that unjust means be not used against them. There is a clear and generally recognized principle in regard to *damnificalio* that it is a violation ofjustice to use unjust means to prevent a person from attaining even something to which he has *not* a strict right.[3] Thus the procedure adopted by the manager is unjust on more than one count. We may, perhaps, sympathize with him if he cannot obtain the required minimum profit by observing the quoted prices. But surely he cannot hold his customers responsible for that failure—nor for the wastage which is its cause.

A case similar to that under discussion is frequently mentioned by the theologians.[4] It is asked whether false weights and measures may be justly used to ensure a just price for goods when it is not possible otherwise, by reason of unjust tax or monopoly, to obtain this price? Modern writers answer this question in the negative.[5] They would consider the practice justifiable only in the exceptional cases where there is an

[1] Ibid., loc. cit., n. 519.

[2] Merkelbach writes: 'Fieri potest ut pretium, quod summum non excedit, sit iniustum: si semel facta conventione de pretio medio aut infimo, quis occulte sibi comparet summum, decipiendo emptorem in numeratione pecuniae.'—Loc. cit., 2.

[3] Prümmer, op. cit., n. 94, and Davis, *Moral and Pastoral Theology,* ii, p. 326. Prümmer writes: 'Qui . . . vi fraude, etc., procuravit, ne dives determinato pauperi daret eleemosynam, ad restitutionem tenetur. Nam licet pauper non habet strictum ius ad eleemosynam, habet autem strictum ius ne impediatur ab eleemosyna recipienda per media iniusta. . . .'

[4] St. Alphonsus, *Th. Mor.,* iii, n. 822. Cf. Prümmer, ii, n. 294, Merkelbach, loc. cit., n. 519.

[5] Prümmer, for instance, says that an affirmative reply is to be taken *cum grano salis.*

universal and recognized custom to this effect—or when the buyers unjustly compel the vendors to sell the goods at an unjust price. In the former case there is no deception ; in the latter there is no fraud but rather a form of occult compensation. No plea of this kind is advanced by the manager in the case submitted by ' Caius.'

The procedure adopted by the manager is clearly unjust; and, we take it, gravely unjust. Paul co-operates positively and immediately in this grave injustice.[1] It is very difficult, if not impossible, to find a cause which might justify his continuance of this immediate co-operation in injustice.[2] Some theologians do, indeed, say that a very grave cause, such as danger to life, would *probably* suffice.[3] But in the case of Paul there is no evidence that such a sufficient cause is actually present. We think, therefore, that Paul must give up his employment, if continuance therein necessarily involves his continued co-operation in the unjust treatment of the customers.

We are not told anything of the nature of the declaration not to overcharge which Paul has signed. But the fact that he has signed a declaration of this kind implies, at the very least, an additional obligation in fidelity to abstain from overcharging—and even to resign his position, if resignation is the only available means of avoiding the unjust overcharging.

OBLIGATIONS IN REGARD TO PIOUS BEQUESTS

A wealthy parishioner who died some time ago left by will a large sum of money for pious purposes in the parish. Unfortunately the will lacked a formality required by civil law and was declared invalid. The legal heirs have not carried out, nor do they seem to have any intention of carrying out, the will of the testator in regard to the pious bequest. I fear the estate has already been divided. What exactly are the obligations of the heirs in this matter ? Am I bound to take any steps ? I am the *parochus proprius* of all the parties concerned.

Fiat Iustitia.

We assume that the will in question was valid in the natural law, that is to say, that it contained the true intentions of a testator who had testamentary capacity.[4] The Church claims to be exempt from the invalidating condition of civil law. It

[1] Cf. Merkelbach, i, n. 489 ; Noldin, *De Praeceptis,* n. 118, et seq.
[2] Cf. Merkelbach, ii, n. 315, B; Prümmer, i, n. 619.
[3] Noldin, *De Praeceptis,* n. 318, 3; Merkelbach, loc. cit.
[4] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 367.

is laid down in the Code that, in wills in favour of the Church, the formalities of Civil law should, as far as possible, be observed. If, however, these formalities have been omitted, and the right of the Church cannot be sustained in a civil court, the heirs are nevertheless to be admonished to fulfil the pious bequest of the testator.

Hae (sollemnitates iuris civilis) si omissae fuerint, heredes moneantur ut testatoris voluntatem adimpleant.[1]

There was some doubt about the meaning of *moneantur* and the Commission for the Interpretation of the Code was asked: Whether the word is preceptive or only exhortatory? And the reply came in the affirmative to the first part, in the negative to the second.[2] There is, therefore, an obligation on the heirs to fulfil the pious bequest. If the estate has been divided among several heirs, each is bound to pay a share of the pious bequest—a share proportioned to the amount received as his part of the legacy. The obligation is grave if there is grave matter at stake. Presumably there is in the case, as a large sum was bequeathed.

It is the duty of the Ordinary to inform the heirs of their obligation. He is constituted by law the executor of all pious bequests. He has a duty of vigilance. He must see that pious bequests are fulfilled. Any clauses in a will contrary to these rights and duties of the Ordinary are regarded as non-existent.[3] In the case before us it is the local Ordinary who is concerned. Where does the parish priest come in? On general principles we would conclude that, in order that justice be done, he should inform the Ordinary of the position—otherwise the latter might often be unaware of the non-fulfilment of pious bequests. This duty of the Parish Priest is expressly laid down for this country, in the *Maynooth Statutes.*

Parochus certiorem faciat Episcopum si, ob ommissas iuris civilis sollemnitates, ultima voluntas in favorem Ecclesiae vel causae piae non adimpleatur.[4]

According to the principles of interpretation[5] the obligation of the parish priest is grave *pro ratione materiae.*

[1] Canon 1513, § 2.
[2] 17 February, 1930, cf. Bouscaren, *Canon Law Digest,* i, p. 725.
[3] Canon 1515; *Maynooth Statutes,* n. 444 and 445.
[4] n. 430.
[5] n. 6, [6] Verba in modo imperativo, etiamsi mandatum non aliter significetur, pro ratione materiae obligationem in conscientia imponunt.

OBLIGATIONS OF THE PARISH PRIEST REGARDING PIOUS BEQUEST

Not infrequently it happens that a parish priest learns that money has been left for Masses and other pious purposes; but years pass and no official information reaches him from solicitor, executor or beneficiaries of these legacies. Neither is the Bishop of the diocese acquainted. What is the extent of the parish priest's obligation, if any?

J. M.

By Canon Law Ordinaries are constituted the executors of all pious bequests contained in last wills or in other instruments for property transference.[1] The Ordinaries have the right and duty of vigilance to ensure that the pious bequests are duly paid over—and any clauses contrary to that right, which may be inserted in a will, are to be ignored. As our readers are aware, if a will, which contains a pious bequest, is valid in the natural law (that is if it expressed the mind of one who has testamentary capacity regarding the disposition of his property) even though this will lacks some formality required for validity by civil law, the heirs arc bound to fulfil the wish of the testator in regard to the pious bequest.[2] And it is the duty of the Ordinary to inform the heirs of this obligation. If there is question of a will which is valid in civil law, the pious bequests of which are not being discharged, it would similarly be the duty of the Ordinary to inform those concerned of their obligations and to insist upon their fulfilment. The following regulation is laid down in the *Maynooth Statutes*[3]

Inspiciant Episcopi ac sint qui legata pia non exsequantur. Episcoporum enim est providere ut omnia legata in pios usus relicta, iuxta intentionem testatorum debito tempore exsecutioni mandentur. In hisce vero rebus, sacerdotes, si legatarii vel testamentorum exsecutores sint, tenentur Episcopum consulere et consilio ipsius dirigi.

Naturally the Ordinary cannot have first hand knowledge of all pious bequests in his territory, or of the failure of those concerned (solicitors, executors, beneficiaries) to fulfil their obligations in regard to these bequests. It is here that the parish priest comes in. If he has prudent reasons for thinking that the intentions of the testator regarding a pious bequest have not been duly fulfilled, he should inform the Ordinary of this.

[1] Canon 1515, § 1—*Maynooth Statutes,* n. 444.
[2] Cf. Canon 1513, § 2. Cf. preceding reply.
[3] n. 445.

This obligation is stated in the *Maynooth Statutes*[1] when there is question of pious bequests in a civilly invalid will. The statute imposes a grave obligation on the parish priest when the matter at issue is grave—as it almost always will be. And it can be argued, *a pari,* that the parish priest is gravely bound to inform the Ordinary if, to his knowledge, pious bequests are not being discharged for any other reason. This applies whether or not the parish priest is the legatee. If the Ordinary is not informed of these matters he cannot exercise the necessary vigilance. The fact that the bequest of a parishioner for Masses does not come the way of the parish priest (when no beneficiary is specifically mentioned) is not, however, a proof that the wishes of the testator, in this matter, are being ignored.

OBLIGATION TO PAY ROYALTIES

Certain authors allow their dramatic works to be produced by amateurs if permission is expressly given. They also claim royalties. If local groups stage one of these performances without permission, feeling that they are likely to escape detection, what is their duty in conscience with regard to restitution of the royalties? Some who are willing to admit that such a practice is most dishonourable seem to think lightly of the duty of restitution, assuming apparently, that the law is merely penal. But in view of the difficulty of detecting offenders—often because of distance—a merely penal law seems totally inadequate to protect the interests of a section of the community which finds it none too easy to make ends meet.

C. P. R.

It is universally taught by theologians[2] that the natural law confers on authors full ownership of their unpublished work. To steal the manuscripts of these works, to use them or to publish them against the reasonable wishes of the author would manifestly be a violation of strict justice involving the obligation to make restitution for the loss sustained by the author. Theologians pose the further question whether the natural law retains for the authors ownership of their works after they have been published. The view of the majority[3] is that it does, at

[1] n. 430. Cf. preceding reply.

[2] Cf. Priimmer, *Th. Mor.,* ii, 9; Jorio, *Th. Mor.,* ii, nn. 618-9; Davis, *Moral and Pastoral Theology,* ii, pp. 270–1; Croliy, *De Justitia,* n. 644.

[3] Merkelbach, *Th. Mor.,* ii, n. 192, writes: 'Opere iam edito vel invento publici iuris facto videtur auctor conservare dominium et ius percipiendi operis fructus.' Priimmer, loc. cit., calls this view 'communior et verior sententia.'

least to the extent that this ownership is necessary to ensure for the authors a reasonable reward for their industry. To this reward, it will be generally admitted, authors have a right in natural law. Needless to add, however, the natural law does not—it cannot—define in any precise detail the dimensions of that reward nor the degree or duration of ownership that is necessary to ensure it.[1] A few theologians[2] deny that any rights over their published works are conferred on authors by the natural law. Thus, by the fact of publication, according to this group, an author's work becomes common property. We do not agree with this opinion. We fail to see how the fact of publication could so completely sever the bond of ownership acknowledged by all to exist in regard to unpublished works. It seems certain to us that, by the natural law, the author retains the ownership which is the necessary basis of his natural right to a reasonable remuneration for his work; the right, that is, to a reasonable chance of a livelihood from the fruits of his intellectual industry.[3]

Prescinding from this disputed question, it is generally agreed by theologians that the various Copyright Acts which we find in the civil codes of very many countries—including our own—as well as the international conventions on this question, are just and bind (directly) in conscience.[4] In virtue of those laws dramatic authors, or their representatives, have the right, within a certain time-limit, to control the production of their works and to demand the recognized royalties. Copyright laws are not merely penal. There is no convincing argument to show that they are. All the indications point the other way. Our correspondent mentions that purely penal copyright laws would be totally inadequate to protect the rights of authors. The laws bind directly in conscience and, moreover, confer rights in strict justice to royalties—at least up to the point at which the authors may be said to have been reasonably rewarded.[5]* It would, we think, be difficult to prove that infringement of the Copyright Act, after this point has been reached, is a violation of strict justice. But, on the other hand, it will also be often difficult in practice to determine when the author has been justly

1 Merkelbach, loc. cit., says: 'Quousque in locum et tempus ius se extendat auctoris, nequit ex sola rerum natura determinari.'

2 Bucceroni, *Th. Mor.*, i, n. 878; Crolly, *De Justitia,* nn. 644 et seq.

3 Cf. Merkelbach, Prümmer et Crolly, loc. cit.

4 Davis, loc. cit. and Prümmer, op. cit., n. 386.

5 'Illae (leges) in conscientia obligant, atque transgressiones non tantum peccatum sed etiam obligationem restitutionis inducunt.' Prümmer, loc. cit.; cf. Jorio, op. cit., n. 620; Crolly, op. cit., n. 660.

remunerated. The general presumption, however, will be that reasonable reward has been received when, and only when, the copyright granted by civil law expires. Thus the civil law on the matter seems to us to be an attempt to define more precisely the period of ownership which is, as a general rule, necessary in order that an author may receive for his labours the due reward which is his natural right.[1] In other words the civil law of copyright is, in our view, a closer determination of a strict right granted by the natural law itself.[2] But it must be noted that even those theologians who deny that the natural law accords to the authors any strict rights over their works after publication will, for the most part, admit that civil law can, and does, grant such rights—in particular the rights to control the production or reproduction of the works and to demand royalties.

There is then an obligation in conscience to pay royalties for the performance of dramatic works in accordance with the Copyright Act. The obligation is one of strict justice[3]—unless perchance, it is certain that the author has been already reasonably rewarded for his work. In practice, as we have remarked earlier, this can hardly ever be certain, for it is difficult to determine in this connection both what is a reasonable reward, and when such has been received. Our correspondent suggests, rightly we think, that authors are frequently inadequately remunerated. If royalties have not been paid there is an obligation—*ex genere suo gravis*—to make restitution[4]—provided, of course, other necessary conditions for restitution are present. In ' C. P. R.'s ' letter, we are presented with a general situation rather than with a particular case. In this reply, therefore, we can only give similarly general- principles. If profit has been made as a result of the dramatic performance, restitution of royalties, as a first charge, should, we think, be made from it.[6] If no profit has accrued we must ask if there was theological guilt on the part of the amateur groups or on the part of those responsible for them. If there was, then there is an obligation to make restitution. Our correspondent suggests that there is often a confused mentality in regard to the nature of the copyright law's. If it was genuinely, though erroneously, thought

[1] Cf. various authors cited *supra.*

[2] Waffelaert, *De Justitia,* n. 173, writes : ' Eiusmodi leges tam proxime in naturali aequalitate fundantur ut considerari possint veluti ipsius iuris naturae evolutio.'

[2] Cf. O'Neill, ' Infringement of Performing Rights,' *Irish Ecclesiastical Record,* vol. liv, p. 647.

[4] Cf. Lehmkuhl, *Casus Conscientiae,* i, n. 580.

[5] This is merely an application of the principle : ' Nemo ex re aliena injuste locupletari debet.' Cf. Lehmkuhl, *Th. Mor.,* i, n. 904.

that the laws are purely penal the element *of formal guilt* would have been absent and there would be no obligation to make restitution—*ante sententiam judicis.*[1] In brief, then, it is our view that courtesy, equity and strict justice all demand that the permission of the author for the performance *of* his dramatic work be sought and that the prescribed royalties,—if not remitted, as they often are to amateur groups—be paid in accordance with the civil law.

OBLIGATIONS OF A GUARANTOR AND OF THE EXECUTOR OF A VERBALLY DECLARED LAST WILL

(1) In the district to which there is reference the Nationalists and Unionists were evenly balanced. To augment the Catholic vote a number of Nationalists, say twelve, clubbed together, and secured money from the local bank to build houses to be occupied by Nationalist voters. Included among the guarantors was the local curate, who acted against the Statutes. Later this curate was transferred to an entirely different district and freed himself from the responsibility. What is his obligation ? The property is still in the hands of the remaining guarantors.

(2) Testator made his will, leaving a sum of money to the local priest, who was later transferred. Before his death the testator endorsed his deposit receipt, which represented all he possessed, and gave it to his confessor, instructing him to give over to charity whatever remained after the funeral expenses had been paid. No mention was made to the confessor of the bequest to the former local priest. The money has all been distributed in local charity. Is there any obligation now on the confessor ?

Scrupulosus.

(1) Clerics are forbidden by the Code[2] to act as guarantors, even with their private property, without first consulting the local Ordinary. There is a somewhat similar prohibition addressed to priests in the *Maynooth Statutes*[3] where it is stated that the express permission of the Ordinary should be obtained. It will be noted, however, that in both the general and the national law we have only a prohibition. That is to say these laws make it only unlawful for a cleric to act as guarantor

[1] Cf. Crolly, op. cit., n. 661.

[2] Canon 137 : 'A fideiubendo, etiam de bonis propriis, clericus prohibetur, inconsulto loci Ordinario.'

[3] Decree No. 50 : ' Sacerdotes . . . (ne)in rebus pecuniariis aut in exsecutione quorumcunque contractuum se vades aliorum constituant ; neque munus tutoris vel fiduciarii sine expressa Ordinarii licentia sibi conferri permittant.'

without due permission. If a cleric contravenes the law in this matter he acts unlawfully, but he enters a valid contract.[1] The Statutes of the ecclesiastical province concerned have nothing to say on the question at issue. We have not seen a copy of the Statutes of our correspondent's diocese, but we think it reasonable to assume, subject to correction, that they, too—if they make any reference to the matter—merely prohibit clerics from acting as sureties.

In the case submitted the local curate, notwithstanding the prohibition of law, entered a valid contract of suretyship. He incurred, therefore, with the other guarantors the obligation of joint liability for the amount guaranteed to the bank.[2] The obligation of this contract is really twofold. There is the obligation to pay the bank in the event of the failure of the principal debtors, and an obligation to the fellow-guarantors to share the responsibility with them. The curate entered the contract and incurred its obligations in his private capacity. It is not suggested that he acted as curate of the place so that the obligations would pass on to his successor. Nor could he justly, on his private authority, prejudice the interests of his successor in that way.

The fact that the curate has been transferred to an entirely different district does not mean that the obligations validly—though unlawfully—contracted cease. That, indeed, would be a too facile release. If it were admitted it might equally be argued, that a curate, on transfer, is not bound to pay debts, beyond his assets,[3] contracted with the local grocer! Our correspondent, however, states that when transferred the curate freed himself from his responsibility. We are not told how he did so. It must be recalled that the responsibility was twofold. It may, perhaps, be that the other guarantors agreed to release him and jointly assumed his share of the guarantee, and that this arrangement was accepted by the bank. Or it may be that he only contracted with the bank and the others to act as guarantor for the duration of his curacy in that particular place, or that his successor, in agreement with the bank and the others, freely took over his liabilities under the contract. If any of these suppositions is verified the curate would clearly be freed from all obligations in the matter. From the terms in which the case is presented, however, it seems unlikely that any of the suppositions has, in fact, been verified. We referred to them

[1] Cf. Canon 11.
[2] Cf. Merkelbach, *Th. Mor.*, ii, n. 607; Jorio, *Th. Mor.*, ii, 1019-20.
[3] Cf. *Maynooth Statutes,* Decree No. 53.

as the possible explanations of the statement that the curate had, on his transfer, freed himself from his responsibility as surety.[1] If, then, as we suspect, these explanations do not fit the case, the curate still remains morally bound by the obligations of the contract on which he entered—the statement that he had freed himself notwithstanding. He is still jointly responsible with the other sureties to the extent of the sum guaranteed to the bank.

(2) The final arrangement made verbally by the testator dealt with the disposal of his entire estate. Presupposing soundness of mind and the absence of unjust influence, that verbal arrangement was, by natural law, a valid disposal,[2] and maybe taken as intended to supersede and to recall implicitly all previous declarations—including the written will. The confessor was justified, therefore, in executing the terms of the final arrangement. Apparently he got no instructions in regard to the specific bequest to the former local priest. It seems that the selection of the charities which should benefit was left largely to the confessor's discretion. He had, then, no obligation from the natural law in regard to the bequest contained in the will. We should add, however, that the civil law would uphold the written will[3] if it contained all the necessary legal formalities. An action could be legally instituted to have that will admitted to probate and executed. In which case the confessor might find himself in a very difficult position. But our correspondent is not concerned with this contingency. As the case stands, assuming that the confessor disposed of the estate in accordance with the final verbal instructions of the testator, there are no grounds for suggesting that he has now any further obligations in the matter.

[1] Even if he has been freed from liability in the civil law, it does not follow that the moral obligation is extinguished. So, for example, the betting contract is good in conscience, and the Statutes of Limitation do not release the debtor from the moral obligation, cf. Crolly, *De Contractibus,* n. 679. Davis, *Moral and Pastoral Theology,* ii, p. 316.

[2] Cf. Priimmer, *Th. Mor.,* ii, n. 277 ; Davis, *Moral and Pastoral Theology,* ii, pp. 366-70.

[3] A nuncupative will, according to our civil law, is only valid in the case of soldiers on active service and sailors at sea. But even after such a will is declared null, bequests for pious causes would still bind in conscience. Can. 1513, § 1. The civil law would also give priority to a specific legacy over general bequests.

OBLIGATIONS OF A GUARANTOR

In your earlier reply you are insistent that a contract which is *de re illicita (Maynooth Statutes,* n. 50) should be carried out. You make no allowance for the curate who probably fell into the hands of shrewd politicians, and in no respect profits by the transaction—as he is removed entirely from the sphere of benefit. His withdrawal from the scheme occurred in 1912, when the original account was transferred to another firm. A letter was then received from a solicitor, one of the other guarantors, complaining—but, nevertheless, they carried out the new deal. Would it not be reasonable, and at the same time a gracious gesture, that the present guarantors, who still retain the property, should liberate the curate guarantor who has misgivings as to his obligations ?

Scrupulosus.

In our previous reply we pointed out that in the general law of the Code[1] and in the *Maynooth Statutes*[2] there is a prohibition—and only a prohibition—against priests acting as guarantors without the due permission of their Ordinary. It follows that the curate, of whose obligations there was question, acted unlawfully ; but we maintained, we were insistent, that he, nevertheless, entered, *sub hac ratione* at least, a valid contract of guaranty. The reason for this insistent statement is contained in canon 11 where it is laid down that laws are to be regarded as invalidating or ' inhabilitating ' only when it is expressly or equivalently stated in them that the act is null, or that the person is incapable of performing the act.[3] Now, there is no express or equivalent statement of this nature in the laws which forbid a priest to act as guarantor without the due permission of his Ordinary. Therefore, the conclusion is insistent, these laws do not invalidate the contract unlawfully entered upon. And if the contract is valid, the curate, unless he is otherwise released, must discharge its obligations.[4] He cannot justify his failure to do so by arguing that the law forbade him to enter this contract of guaranty ; that, therefore, it was invalid, and that he is not bound by any obligations arising out of it. We have dwelt on this point because it seemed to be the line of argument implicit in our correspondent's original query. We rejected it then. It is recalled, somewhat querulously, in the opening sentence

[1] Canon 137.
[2] Decree 50.
[3] The exact wording of the canon is : ' Irritantes aut inhabilitantes eae tantum leges habendae sunt, quibus aut actum esse nullum aut inhabilem esse personam expresse vel aequivalenter statuitur.'
[4] Cf. St. Thomas, 5. *T.* 2, 2, q. 87, a. 2 ; St. Alphonsus, *Thtol. Mor.,* l. 3, n. 712.

of the present query. We equally reject it now. And *if this twofold rejection constitutes for our correspondent the basis of his charge that we make no allowance for the curate we can* only admit the impeachment.

We explained in our earlier reply what we considered to be the curate's obligations as a result of the contract. We took it for granted then that there was no reason, other than the prohibition of ecclesiastical law, *for* impugning the validity of the contract of guaranty.[1] There is a faint suggestion in our correspondent's present letter that the curate may have been unfairly used by shrewd politicians. But there is no evidence advanced which would show that there was unfair usage *of* such a kind as would destroy the validity of the contract and its force in conscience.[2] The politicians are only described as shrewd—not unscrupulous, as they are so often alleged to be! The fact that the curate profits in no way from the transaction is hardly pertinent to the issue of the validity of the contract. One seldom profits from a contract of suretyship—though the theologians considerately admit that one may justly do so.[3] It is interesting, therefore, to note that the curate might have benefited if he had not been removed from the sphere of influence of the scheme. From a reading of the two queries, taken together, we gather that the curate's 'withdrawal from the scheme' synchronized with his removal from the sphere of possible benefit. This is significant. The thought occurs that, in the whole project, shrewdness may not have been monopolized by the politicians! It now comes to light that the contract was originally entered upon prior to 1912, that is before the publication of the Code and the *Maynooth Statutes* from which we quoted. We somehow assumed that the reference was to a much later period. This false assumption, however, does not really matter, because the prohibition which we quoted from the Statutes of the Maynooth Synod of 1927 was contained, almost verbatim, in the Statutes[4] of the previous Synod of 1900, and the principle of canon 11 has been recognized since the time of Innocent III.[5] The new information concerning the date docs not, therefore, demand any alteration in our conclusion in regard to the contract. Briefly, despite the added facts and

[1] No other reason was mentioned explicitly or even remotely suggested.

[2] Cf. Priimmer, *Th. Mor.,* ii, n. 255 et scq.

[3] 'Pro fideiussione licet accipere pretium, etsi nullum periculum timeatur; quia ex se pretio est aestimabilis.'—St. Alphonsus, op. cit., n. 912.

[4] Decree 204.

[5] 'Multa fieri prohibentur quae, si facta fuerint, obtinent roboris firmitatem.'—Innocent III, *Decret,* iii. 31.

conjectures revealed in this second query, we must still assume that the curate entered a valid contract of guaranty ; that he had the requisite knowledge of the issues involved, and that he freely consented thereto.[1] To assume otherwise, on the evidence available to us, would be to make little allowance for his common sense.

Our correspondent informed us in the earlier query that the curate had freed himself from his responsibility. We were not told how this had been achieved. We were at a loss to understand. We outlined several possible explanations of the alleged freedom from responsibility—but we were not sure that any of them fitted the case. We must recall that the obligation of the curate in the circumstances was twofold : an obligation towards the bank in the event of the default of the principal debtors whose debt was guaranteed,[2] and an obligation towards his fellow guarantors to stand by them, to share their responsibility. They had all ' clubbed together.' It has now been revealed that the curate ' freed himself from his responsibility ' by withdrawing from the scheme when the account was transferred from one bank to another. At least this is what we understand from our correspondent's second query. Apparently, then, the new deal was carried out and accepted by the second bank without the guarantee of the curate. It would follow, in this supposition, that the curate has no obligation, never had any obligation, towards this bank. Nor, needless to say, has he now any obligation towards the first bank which has ceased to be interested in the transaction. But what of the curate's obligations towards his fellow guarantors ? His original obligations towards them should remain. Inasmuch, however, as these other guarantors merely complained once, many years ago, of the curate's attitude, and did not press him to fulfil his bond, and, further, seem to have contracted with a new bank without his guarantee, it may be argued that they have condoned, at least tacitly, the curate's obligations towards themselves.

In the final sentence of the present letter our correspondent asks a question which is not strictly theological. But we may answer without hesitation that, in our opinion, it would be reasonable in the circumstances, and, at the same time, a gracious gesture if the guarantors were to agree to declare expressly that they released the curate from all obligations towards themselves under the guarantee.

[1] Cf. Priimmer, loc. cit.
[2] Cf. St. Alphonsus, loc. cit.

OBLIGATION OF CONVENT CHAPLAIN TO CORRECT INJUSTICE

I would be grateful for the solution of the following question : As chaplain attached to a convent school run by Sisters I was informed by the Accountant that the wages paid by the Sister Superior to her servants were far below the average standard and consequently unjust. The Accountant made a remark about it to the Superioress, but without result.

I then went to my parish priest for advice in this matter, and, after I had explained the whole situation, he instantly agreed with me that here there was a case of marked injustice, and he told me that it was not only my right but also my grave duty, as priest and chaplain, to inform Sister Superior of this violation of the natural law.

Naturally, I do not like to mix myself up in the private affairs of the school, for that is certainly not my duty. My question is whether it really belongs to my duty as priest and chaplain to bring this injustice to the notice of the Superioress ; and, *if it* is, what are the reasons to support this view ?

Sacerdos.

It is only fair to remark, by way of introduction, that, in convents monetary wages are sometimes supplemented by other perquisites—such as clothes or food, for dependants, given to the employees. Thus it may be that the alleged discrepancy between the average standard of wages for servants and that given to convent employees is not so great in reality as it seems ; is, in other words, more apparent than real. But, it is equally only fair to remark, the question may be asked whether servants are not entitled to prefer a just monetary return for their work ? It may well be said that such perquisites are not strictly wages. We might add, in view of a statement of our correspondent, that the average standard of wages is not necessarily a just standard—as history shows. Nor, indeed, on the other hand, does the average standard necessarily represent the minimum just wage so that any deviation from it, by way of diminution, is inevitably unjust.

But all this is by the way. We take it that, in the case before us here, there is no doubt that the wages given by the Superioress of the convent are unjust. What we have written by way of introduction is not in any sense intended to palliate such injustice which is a violation of the natural rights of the servants ; is, therefore, as our correspondent notes, a violation of the natural law. It is a particularly anti-social sin and is one of

those crimes which, we are told in Scripture, cry to heaven for vengeance.[1]

The chaplain has become aware of this violation of the natural law. He has got his knowledge in a legitimate manner and is free to use it. What is he bound to do? The duties of a chaplain to a lay religious institute, such as a convent, are not defined precisely in the Code.[2] If the religious institute is not exempt from diocesan jurisdiction—and the convent in question here is not exempt—the local Ordinary designates the chaplain for divine service and for preaching.[3] It is asked, then, has the chaplain thus designated the rights and duties of a parish priest in regard to the religious institute and its members? *Per se* he has not.[4] Commentators[5] frequently compare his status to that of a rector of a church—though the relevant canon[6] makes it clear that this comparison is by no means perfect. We have written '*per se*' because it is stated in the Code[7] that the local Ordinary can exempt the religious institute from the jurisdiction of the parish priest and give the chaplain parochial rights over it. Commentators suggest that the local Ordinary should adopt the foregoing procedure. Coronata, for instance, writes[8]:

> Ordinarius loci potest ei (capellano) committere universam curam paroecialem religiosorum: immo si capellanus constituatur valde congruere videtur ut id ei committatur.

The rights and duties of a chaplain to a convent then, will depend to some extent upon whether or not the convent has been exempted from parochial jurisdiction and placed under the pastoral care of the chaplain. His letters of appointment or custom may sometimes help to decide this fact.

It seems clear enough in the case we are considering that the chaplain has the pastoral care of the convent and its inmates. That, as the commentators remark,[9] is the situation one normally expects to find when a special chaplain has been appointed to an institute. Moreover, the reply of the parish priest when approached implies, if it does not demonstrate, that the chaplain

[1] Cf. Deut. xxiv, 15; St. James v, 4.
[2] Cf. Woywod, *Commentary on Canon Law,* i, p. 201.
[3] Canon 529.
[4] Cf. Woywod, loc. cit.
[5] Cf. Wernz-Vidal, *Ius Canonicum,* iii, n. 209.
[6] Canon 479. In § 1 there is a definition of the rector of a church, and § 2 goes on to say that if there is question of a chaplain to a convent the prescriptions of the particular canons are to be observed.
[7] Canons 464, § 2; 514, § 3.
[8] *Institutiones Juris Canonici,* i, n. 556.
[9] In Wernz-Vidal, loc. cit., we read of the arrangement '*ut practice fieri solet.*'

has the *cura animarum* within the convent walls, and even if it be maintained by reason of the absence of positive evidence of exemption that the convent has not, in this case, been exempted from the jurisdiction of the parish priest, it matters little ultimately for the purposes of our reply to the question. Because it can be said, at the very least, that the parish priest has deputed the chaplain to act in his place in the matter at issue.

In reply then to 'Sacerdos we would say that, as chaplain to the convent, he has a duty to inform the Superioress that she is gravely violating the natural law in the matter *of* servants' wages. He has the *cura animarum* in the convent.[1] And it is part of the duty of one who has the care of souls prudently to correct the erring.[2] He should admonish those of his flock who are guilty of serious violations of the moral law. He should admonish them by private correction or even by public condemnation if the circumstances demand this latter course.[3] There is question here of a grave violation of the natural law, a violation which injures an innocent and needy third party and which may give, or may have given rise, to scandal and detrimental criticism of religious institutes in general—for critics are prone to generalize, often rashly and unjustly. And so, even if the Superioress in the case were in good faith,[4] and her violation of the natural law only a material sin, the chaplain would still be bound to correct her false conscience in this matter. Such action is not a case of interfering with the private affairs of the school but of correcting a grave moral abuse. Our correspondent is, of course, right when he says that interference in the private affairs of the school is not part of his duty. Any such interference, say in the arrangement of classes, is not merely not part of the duty of a chaplain as such, but would be entirely unwarranted and reprehensible.

If we look at this question from another point of view, from the other end, so to speak, we reach the same conclusion. The convent servants are also part of the chaplain's pastoral care. In the circumstances they can be classified as the poor.[5] And

1 Cf. Canon 464.

2 Canon 467, 'Parochus debet errantes prudenter corrigere.'

3 In Aertnys-Damen, as a commentary on the foregoing quotation from Canon 467, we read 'quem ad finem debent (parochi) primum auctores alicujus scandali vel abusus privatim et paterne hortari si spes fructus adsit; quod si non sufficiat, debent publice corripere.' *Th. Mor.*, i, n. 1157.

4 We note, however, that the remark of the accountant achieved no result.

5 The poor are the object of the pastor's special solicitude. 'Praecepto enim divino mandatum est omnibus, quibus animarum cura commissa est, pauperum aliarumque miserabilium personarum curam paternam gerere,' Trent, Sess. 23, c. i, cf. Canon 467.

it can be maintained that the chaplain should do what is reasonably possible for him to secure just wages for these servants. We do not suggest that he should urge the servants to take action for their rights. That might be highly imprudent.[1] But he should, we repeat, leave the Superioress under no misapprehension as to her obligations towards these servants.

As chaplain, then, 'Sacerdos' is, in our opinion, bound *ex officio* to bring her violation of the moral law to the notice of the Superioress. He should do so privately. Even apart from his status as chaplain, our correspondent might be bound in charity, as a priest, to administer a *correptio fraterna* to the Superioress—if there were no one else who would more properly do so and if the *correptio* could be given without disproportionate inconvenience.[2]

THE MORALITY OF 'BOYCOTTING' NON-CATHOLIC MERCHANTS

In the town of X where Catholics and non-Catholics are equally numerous and prosperous, Father Petrus urged his Catholic parishioners to boycott non-Catholic merchants, whether they are bigoted or not. Was he morally justified? He thinks so, because of canon 2316 under which Coronata includes as guilty those 'qui haeriticis pecuniam, alimenta, arma aut alia praestant sine quibus errores suos diffundere non valerent' (*Instit. Juris Can.*, iv, n. 1868)

Burindanis.

Father Petrus may be able to advance some alternative justification for urging his parishioners to boycott non-Catholic merchants, but he certainly cannot, in our view, fairly invoke canon 2316. This canon declares[3] that those who spontaneously and knowingly help, in any way, the propagation of heresy are themselves suspect of heresy. It seems perfectly clear that the canon refers to the crime of those who deliberately contribute to the diffusion of heretical doctrine as such. In the quotation given in the query, Coronata lists among persons guilty of this crime those who provide heretics with the money, etc., without which they would be unable to propagate their heresy. From the context, it is obvious that Coronata has in mind the giving

[1] Cf. Micheletti, *Th. Past.*, iii, n. 583.

[2] Cf. Prummer, *Th. Mor.*, i, n. 599 et seq.; Aertnys-Damen, op. cit., n. 366 et seq.

[3] 'Qui quoquo modo haeresis propagationem sponte et scienter juvat . . . suspectus de haeresi est.'

of money to heretics for the specific purpose of diffusing heretical doctrine. He is speaking of *fautores haereticorum.*

> Fautores sunt qui haereticis auxilio sunt ut haercses facilius diffundere valeant sive hoc positive sive negative faciant. Positive faciunt qui verbis vel factis adjuvant ut e.g. si haereticum laudent qua talem, si illum excusent, commendent, instruant circa modum haeresim diffundendi et damnationem evitandi; item qui haereticis* etc. . . .

as quoted in the query. Moreover, in this context there is question of the crime of heresy and Coronata notes that this crime is committed only by one who is a formal heretic, 'qui haeresim obiectivam dolose et pertinaciter profitetur,'[2] and not by a material heretic who, to quote our author again,[3]

> aliquam haeresim obiectivam profitetur sine pertinacia sed quia ignorant esse errorem in fide.

And it is generally admitted that the vast majority of those born outside the Catholic Church to-day are only material heretics.

Leaving aside canon 2316, it may be asked whether Father Petrus might be morally justified, on other grounds, in urging the boycott of non-Catholic merchants. Strictly speaking, the procedure advocated by Father Petrus cannot be called boycotting in any full sense. This has been defined as 'an organized attempt to coerce a person or party into compliance with some demand by combining to abstain and to compel others to abstain from having any business relations with him or it.'[4] Firstly, there is no evidence, in the case as submitted, that the withdrawal of custom from the non-Catholic merchants is being organized to enforce any specific demand. In fact, there is no clearly discernible purpose in the proposed withdrawal, since it is being urged equally against all the non-Catholic merchants, whether they are bigoted or not. Furthermore, in view of the mixed and fairly evenly divided population, there cannot be any possibility of the complete business and social ostracism of the non-Catholic merchants. Their numerous co-religionists will continue to support them and to associate with them—probably with increased vigour. But the procedure urged by Father Petrus may be called a boycott in the wider sense—defined by Noldin as,

[1] Loc. cit.
[2] Op. cit., n. 1857.
[3] Ibid. One might, indeed, quarrel with Coronata's terminology at this point (cf. canon 1325, § 2—where the term heretic is defined) but his general meaning is quite clear.
[4] Cf. Slater, *The Ethical Aspect of Boycotting,* I.T.Q., ii (1907), p. 242.

multorum communis conventio de non instituendo commercio cum determinata persona, ad quod commercium singuli ex contractu non tenentur.[1]

Indeed, Noldin gives as an example of such *conventiones* the common agreement to abstain from dealing in a particular shop or from selling to particular buyers. Noldin holds that this boycotting is not *per se* opposed either to justice or charity—provided the purpose for which it is undertaken is good and provided unjust means are not used.[2]

In the case proposed in the query we presume that the suggested boycott is directed towards some purpose which is morally good—though we do not know what this purpose may be. We presume also that unjust means, such as violence, threats, fraud, pernicious lies, defamation, etc., will not be used in the course of the boycott. Any Catholic, indeed any person, has the right to abstain from dealing in any particular shop, or group of shops, and may also combine with others in the use of this right of abstention. There is, in our context, no violation of the principle : *sic utere jure tuo ut alienum non laedas.* The Catholics who combine to use their right of abstention do not thereby contravene any right of the non-Catholic merchants. These latter have no strict right to the custom of any individual or group in the community. They have, indeed, a right to access to the means of livelihood, and the right, within certain limits, to the advantages of social intercourse—but these rights are not, in the circumstances, jeopardized by the withdrawal of the custom of the Catholics in the community. Accordingly, the boycott urged by Father Petrus does not, *per se,* involve any violation of strict justice. Nor does this boycott necessarily imply any injury to the common good, any violation of legal justice. At first sight, however, it might seem that such a boycott offends against charity. But, again, this is not necessarily so. It is true that the non-Catholic merchants will be deprived of certain advantages but there is no obligation, even in charity, to confer an advantage or benefit on one's neighbour unless he is in some degree of grave need. Presumably the non-Catholic merchants will not be reduced to this state by the withdrawal of the custom of Catholics. It may be said, then, that the boycott advocated by Father Petrus does not, *per se,* offend against the moral law. We do not say, we could not without a fuller knowledge of the local circumstances, that Father Petrus acted

[1] *De Praeceptis,* n. 306.

[2] In Jone-Adelman, *Moral Theology,* n. 345, we read : 'Boycott is in itself not an unjust damage ; neither is it against charity if the ends and means are good.' This is an over-simplified statement of the position.

prudently in urging this boycott against *all!* the non-Catholic merchants. There is little room for hesitation in the case of the bigots. But we have not been asked precisely for a judgment on the prudence of the action taken by Father Petrus. We might add, however, that it is socially valuable to maintain as far as possible, peace, harmony and good relations between all the sections of the community. It should be remembered also that boycotts, such as that advocated by Father Petrus, however justifiable they may be in themselves, in their origin and purpose, can easily, as they develop, lead to violations of justice and charity.

It is in place to note here that boycotting in the strict sense, as defined earlier, can be morally justified only in exceptional circumstances. There is a clear moral principle that unjust damnification is committed when a person is prevented, by any means, from attaining something to which he has a strict right, or when unjust means are used to prevent a person from attaining a thing, even though he has no strict right to it. Among fundamental human rights in organized society is the right of the individual to share in the advantages of social intercourse in the community to which he belongs. Yet this right is not absolute. It is limited by the requirements of just law, and by the reasonable conditions demanded by the other members of the community for the protection of their legitimate interests. If an individual is not willing to abide by these reasonable conditions he may be subjected to the pressure of being deprived, *pro tanto,* of the advantages of social intercourse. A boycott in the strict sense aims at depriving him completely, by a combined effort, of these advantages. Obviously this extreme form of pressure will be lawful only if the conditions which the boycotted person refuses to accept are necessary for the protection of a very important legitimate interest for the other members of the community. In other words, the good to be achieved by the boycott must outweigh, or compensate for, the injury done to the person who is deprived completely of his fundamental right to partake of the advantages of social intercourse. A very careful assessment of conflicting interests is demanded here.

THE TRANSFER OF RAILWAY TICKETS

I. Railway tickets are marked 'not transferable.' Is there a grave obligation to observe this rule? I can visualize two ways of violating it. (1) A person who buys a ticket finds himself unable to travel. If he gives his ticket gratuitously to another or if he sells for the price which he paid, does he do any injustice to the Company? (2) If he

buys a return ticket and finds on arriving at his destination that he is unable to return within the period for which the ticket is available, does he commit a sin against justice if he disposes of the return half, either by donation or by sale as above ?

Mercator.

There is not *per se* any grave obligation to observe the rule which forbids the transference of railways tickets. No unjust injury is done to the Company whether tickets duly purchased are resold or are given away gratuitously. This applies to the unused portion of return tickets as well as to complete return or single tickets. So long as a passenger holds the appropriate ticket for which the prescribed fare has been paid, his obligations in strict justice, and his contract with the Company, have been substantially fulfilled. The Company gets the recognized fare, according to the class selected, for transporting a passenger over a certain journey. In the sphere of strict justice it is immaterial whether the fare was paid at a railway station or travel agency or elsewhere, by one person or by another, by the original holder of the ticket or by somebody else. We would add, however, that these rules, regarding the non-transferability of railway tickets, serve a useful purpose. They are designed to prevent fraud and profiteering and are for the public good. Consequently, it would be unethical wantonly and completely to disregard them. Normally, there will be little inconvenience or loss involved in following the recognized procedure, which is to obtain a refund for unused tickets or portions of tickets, and to allow one's friends to purchase their tickets in the ordinary way.

THE MEANING OF THE NON-TRANSFERABILITY OF RAILWAY TICKETS

In a previous reply it is stated, in answer to a question concerning the obligation of observing the rule forbidding the transference of railway tickets, that : ' there is not *per se* any grave obligation to observe the rule which forbids the transference of railway tickets.

The solution appears to be contrary to that given in answer to the same question which appeared in the *Irish Ecclesiastical Record* of 1910, p. 495, and is also at variance with the solution given to a similar question in Canon Mahoney's *Questions and Answers,* ii, p. 111, n. 429. An elucidation of the apparently conflicting opinions would be much appreciated.

F. W.

Our correspondent refers to a reply to the question whether there was a grave obligation to observe the rule regarding the non-transferability of railway tickets—either in reference to a complete ticket, single or return, or in reference to the unused half of a return ticket. In our reply we stated, as quoted, that there is not *per se* any grave obligation to observe the rule. And we added that violation of the rule did not cause any unjust injury to the railway company; that, so long as a passenger holds the appropriate ticket for which the prescribed fare has been paid, his obligations in strict justice, and his contract with the company, have been substantially fulfilled. The company has received the recognized fare, according to the class selected, for transporting a passenger over a certain journey. In the sphere of strict justice it is immaterial whether the fare was paid by the actual traveller or by somebody else, whether it was paid directly at a railway station, to a travel agency or to a private individual—provided it reached the company.

This view is now contrasted with replies given by Dr. Harty and Canon Mahoney. Both these writers, it should be noted, were dealing with queries in which the issue was the liceity of transferring to another the unused portion of a return ticket.[1] They argue that the railway company will issue a return ticket, which implies a reduced rate, only when one and the same person proposes to make the double journey; that one of the express conditions of the contract is that the (return) ticket is not transferable. If, then, the two halves of a return ticket are used by two different passengers, the railway company suffers loss to the extent of the difference between the cost of two single and one return ticket, and the person responsible for this loss is bound to make restitution.

At first sight this argument seems convincing. But, even if it be accepted, it would be a valid argument only against the liceity of transferring the unused half of a return ticket. But all railway tickets are equally declared to be non-transferable. What then, we may ask, is the situation if the whole return ticket or a single ticket is transferred to another by sale or gift?

[1] Canon Mahoney deals in the same context with the case of a traveller who is falsely represented to be entitled to travel at half-fare. Surprisingly, he holds that the injustice in this case is less evident than in the case of one who travels on the unused half of another's return ticket. His reason for this distinction is that in the former case it is open to the officials to challenge the holder of a half-ticket as to age. If the officials could easily discover the actual age of the passenger and, nevertheless, issue a half-ticket to one who is over age, 'one could conclude that there is no clear violation of commutative justice and no obligation of restitution.' But is it not also open to the officials at least in some cases, to insist on personal identification?

It is clear that the rule of the company forbidding the transfer of tickets is violated. Would the authors quoted say that sin is committed by this transfer, and, if so, what kind of sin? It cannot be held that any loss is incurred by the company when a whole return ticket or a single ticket is transferred. We may assume that the transferee could have bought these tickets at the same rate. Does the rule forbidding the transfer of tickets bind in conscience only when loss is caused by such transfer? An affirmative answer would seem to be implied in the arguments outlined by Dr. Harty and Canon Mahoney. And thereby, so it seems to us, the incompleteness of these arguments is revealed. From their analysis of the particular case of the transfer of the unused half of a return ticket, they conclude that, by reason of the fact that loss ensues to the company, the non-transferability of the ticket must be regarded as an express condition of the contract, and as binding in strict justice. In other words, their argument seems to be an inference from actual loss to an obligation in justice regarding non-transferability. But does non-transferability cease to be an express condition of the contract when no loss ensues? Does it cease to bind injustice? How can this be? Where are the indications that the rule of non-transferability varies as between different types of tickets? We must repeat that, according to the company's rules, tickets are all equally non-transferable, even though the transfer of some involves no loss whatsoever. Thus their non-transferability is something prior to, and independent of, any consequent loss and cannot, therefore, be adequately explained in terms of loss. This non-transferability must be given a wider explanation and connotation, which apply to all cases and not merely to those in which loss results. The authors quoted did not seek this meaning and connotation. In fairness to them it should be said that they were not formally called upon to do so, as we were, in the question posed to us. But we submit that the meaning and implication of non-transferability could not have been adequately assessed when the examination was confined to the analysis of the case of the transfer of only one type of non-transferable tickets. What we sought in our earlier reply, what we seek now, is the meaning and the binding force of the general rule that *all* railway tickets are non-transferable.

In our view the non-transferability of tickets is not a strict or express condition of the contract. If it were so held to be, it should be a violation of strict justice to transfer any ticket, single or return, and, indeed, such transfer would be an invalid contract. Though the word 'non-transferable' is usually

stamped on tickets and though the rule of non-transferability is written and posted in the company's bye-laws, there is no express mention of it at the time of purchase. Very many people are entirely unaware of it; many more do not understand it. We do not suggest that purchasers may deliberately withhold consent from the condition—if it is really there as such—but we feel that one can hardly be said expressly to agree to a contractual condition of which he is completely unaware, or the fundamental implications of which he does not understand. Contractual consent presupposes knowledge and awareness of what is substantial to the contract. So far as we know, the railway officials take no active steps to bring a condition of non-transferability of tickets before their customers on the occasion of the contract. Nor, apparently, does the company make any particular effort to check up on the violation of this rule. We should expect such steps and effort, if the rule were really meant to indicate an express condition of the contract. The attitude of the general body of railway passengers confirms the view that the non-transferability of tickets is not a condition binding in strict justice. Good and honest men have no hesitation in transferring to others, by way of gift or sale, tickets which they cannot use themselves. They do not feel—we have got the reactions of many—that they are doing anything unjust, anything morally wrong, in violating the rule that tickets are non-transferable—even when they pass on to others the unused portion of a return ticket. They believe, as we do, that, when the appropriate fare has been paid to the company, it is immaterial who occupies the seat paid for; that the essential contract entered upon is the purchase of a ticket for the accommodation and transport of a passenger over a certain journey or journeys; that any rules or regulations about non-transferability are incidental and do not vitiate the contract or enter into its essence. Good and honest men see no parallel whatsoever between the case of one who travels without a ticket, without having paid the fare, and one who travels on the unused portion of another's return ticket. We do not deny, we did not in our previous reply, that the rules and regulations may serve a useful purpose and that they may, *per accidens,* bind in conscience. It seems to us, however, that the prevention of loss is not, and cannot be, a primary purpose of the general rule, which forbids the transfer of tickets—since, as we have noted, the rule applies even when no loss is incurred. The primary purpose of the rule, and one which at least would apply to all tickets, may well be the prevention of the danger of fraud and profiteering. This purpose

would be secured if all tickets were bought, not from private individuals or unofficial agents who might have forged them, but from recognized sources such as a booking office at a railway station or in a travel agency. The company is anxious also to limit the extent of its liability. Tickets purchased at these sources are, so to speak, guaranteed and authenticated. Tickets bought from private persons or unofficial agents are not. Those who accept tickets on transfer may be taking a risk.

Thus we hold fast to the view expressed in our former reply. And lest it be thought that we are alone in holding this view we will quote the statements of a few authors—incidentally the only ones, apart from those mentioned in the query, whom we found to deal with the precise point of the transfer of the unused portion of a return ticket. We hasten to add that we have made only a hurried search through the authors, and there may be others who discuss the point. In Sabetti-Barrett we read[1]:

Casus privilegii specialis omnino distinguendus est a casu tesserae quae valet pro duplici itinere. Haec secunda tessera vere non est speciale privilegium, sed a me empta in meum dominium *absolutum* transit ut ea utar vel alteri dem ut ipse utatur vel ut utar uno itinere ego ipse et amicus rediens utatur.

Jone-Adelman have this brief statement[2]: "One is not obliged to make restitution for disobeying . . . travelling rules, e.g. for giving someone else one's return ticket." O'Donnell was asked the following general question[3] which makes no distinction regarding the type of ticket transferred: "Some years ago I intended going to a certain town by train. I met a man who had a ticket for that place, but who changed his mind and decided not to travel. He gave me his ticket and I travelled with it. Was there any injustice (and consequently an obligation to make restitution) to the railway company?" The reply given was[4]: "There is no injustice. The railway companies do not insist on personal identification. They are satisfied if every traveller has the ticket required for the journey."

Canon Mahoney concludes his discussion by saying that, though there is a violation of commutative justice—and loss to the company—when the unused half of a return ticket is transferred, he could imagine[5] himself not insisting on restitution in cases of this kind for a variety of reasons."[6] In this respect, then, there might be little enough difference between his

[1] *Compendium Th. Mor.*, n. 495.
[2] *Moral Theology*, n. 281.
[3] *Moral Questions*, p. 164.
[4] Ibid.
[5] Loc. cit.

procedure and ours. Canon Mahoney does not indicate what his reasons for not insisting on restitution might be. It seems however, that these reasons would be other than those generally recognized as entitling the confessor to omit the imposition of an obligation of restitution. In other words, it seems that there might be special reasons for not insisting on restitution for the infringement of the rule forbidding the transfer of the unused half of a return ticket. We cannot conceive what these special reasons may be if it is certain that there has been a violation of commutative justice and consequent loss.

PAYMENT OF INCOME TAX BY PROFESSED RELIGIOUS TEACHERS

In Ireland secondary schools for girls are, for the most part, conducted by religious congregations of women, and among the recognized teachers in these schools there are many professed members of the various communities. According to received practice Sisters who fulfil the regulations of the Department of Education are registered and receive incremental grants addressed to them as individuals just like lay secondary teachers. Recently some of the Sisters who are receiving these grants have been assessed for income tax. Morally what is their position ? Are they bound to pay the income tax ? Are they even bound to make returns ?

Querist.

It is perfectly clear in canon law that all property acquired by professed religious, either through their own personal labours or on behalf of the religious institute, does not accrue to them personally but becomes the property of the institute. This prescription of law is laid down specifically in reference to professed religious who have only simple vows, whether perpetual or temporary. The rules of law for those who have been professed by solemn vows are stricter still.[1] And what we say here will apply, *afortiori,* in their case. Our query is concerned with religious who are professed by simple vows. The general law,[2] which holds unless the constitutions of the institute state otherwise,[3] is that these religious retain the ownership of property already possessed and the capacity to acquire further property. But the ownership they retain is only a radical ownership, for

[1] Cf. Canon 582, §§ 1 and 2.
[2] Canon 580, § 1.
[3] Cf. Coronata, *Instit. Juris Canonici,* i, n. 593 : 'Constitutiones vero severiora possunt praecipere, e.g., licentiam Superioris requirendo ad quamlibet acquisitionem etiam nomine proprio faciendam.'

they must, before profession, arrange for the actual administration by others of any property they possess or may afterwards acquire.[1] The canon continues with the operative words which we have paraphrased in our opening sentence: 'Quidquid autem industria sua vel intuitu religionis acquirit, religioni acquirit.'[2] The subject of the sentence, which is understood, is *quilibet professus a votis simplicibus.*[3] The word *quidquid* in the canon obviously includes such items as salaries and increments received by the individual religious as a teacher. Creusen writes:[4] 'All property acquired by religious through their personal activity, or in behalf of the religious institute, becomes the property of the religious institute. Such are the offerings given for the exercise of the holy ministry; the fees and royalties paid to authors; alms given, unless the institute is formally excluded from their enjoyment; the salaries of professors and teachers, etc.' Thus salaries and increments, though acquired by personal labour, cannot in canon law be regarded as income personal to the individual religious to whom they may, for administrative reasons, be personally addressed. They form the income of the religious institute to which the individual belongs. They go into the common purse.[5] This religious community, as an educational and charitable institution, will, presumably, be exempted from payment of income tax.[6]

As we have remarked, the position in canon law is very clear. The Sisters, of whom 'Querist' writes, do not receive the incremental grants as personal income. It follows then that they cannot morally be bound, as individuals, to pay income tax. An obligation to pay income tax could only arise if the community were liable for such tax, and even then the obligation would not rest upon the individual members who happen to be in receipt of taxable incomes, but upon the heads of the religious community in question. When, therefore, individual professed

[1] Cf. Canon 569.—When the vow of poverty is solemn, the capacity to acquire or possess property by a personal title is lost.

[2] Canon 580, § 2.

[3] Cf. § 1.

[4] *Religious Men and Women in the Code,* English translation (Ellis), n. 245. Cf. ibid., n. 274. Coronata, loc. cit., notes [6] Declaratum est fructus propriae industriae qui proinde religioni acquiruntur, consideranda esse stipendia militaria, itemque praemia ob actus valoris militaris obtenta, nec non pensiones vitalitiae ob vulnera aut morbos in bello contractos, quotiens agitur de religiosis qui tempore servitii militaris votis etiam temporaneis obstricti manebant.'

[5] Cf. Canon 594, § 2: '. . . quidquid a religiosis acquiritur et pecunia quaelibet omnesque tituli in capsa communi deponantur.'

[6] Cf. Income Tax Act, 1918; cf. O'Neill-Kiely, *The Principles of Equity,* pp. 100-1.

members of a religious institute are asked by the civil authorities to make returns, with a view to taxing their incomes, they should, we think, simply state that in virtue of their vows and by Canon Law the remunerative value of all their services, anything they earn by teaching or otherwise, belongs not to themselves personally but to their community. It may be said that in the eyes *of the* State and civil law these professed religious receive incomes. In this country the special position of the Catholic Church is recognized in our Constitution.[1] As a religious body this Church has 'the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious and charitable purposes.'[2] Moreover, for over thirty years our civil jurisprudence, in virtue of a decision given in 1925 by the Supreme Court of Saorstât Eireann, has accepted the juridical dignity of canon law on which experts will be heard. It would, we submit, be only perfectly in accordance with these principles that the clear statement of canon law *on the relevant question of fact,* namely, on the position of professed religious regarding property or salary acquired by their labours during their life in religion, should be accepted by the civil authorities.

INCOME TAX EXPENSES

May a person to reduce his income tax expenses :

(1) represent on his return as expenses the amounts which persons in his position normally expend though he in fact did not expend them ;

(2) where he, in fact, expends monies necessarily and exclusively in carrying on his business but the income tax authorities refuse to accept these payments as expenses, substitute on his return fictitious items of a kind which the authorities will accept to an equivalent amount ?

Thus, if A in his business must read certain publications, but consults them in a library or borrows them from a neighbour, can he claim their cost as an expense ? It seems to me that he is entitled to the benefit of his industry, or his neighbour's friendliness.

Or, if A must entertain certain people from time to time or must have meals away from home but the authorities refuse to recognize this item as an expense, can he return the expenditure as travel or some other item they will allow ?

Tax-Payer.

[1] Art. 44, 1°.
[2] Art. 44, 5.

Our fellow tax-payer's query could form the basis of a very wide discussion. But, from the neat definition of his questions, we gather that he does not want any elaboration of the wider issues but rather specific and definite replies. Accordingly, we take his two questions as they stand, and, in our opinion, the first must be answered in the affirmative, the second in the negative.

We answer the first question in the affirmative because, in the circumstances given therein, the tax-payer does not use any unjust or unlawful means to lessen his contribution to the State. He simply claims the expenses which are allowed by the tax authorities to one in his particular position. He is, so to speak, entitled to these expenses in virtue of the office he holds, and states his claim in the returns. We might remark that otherwise, as most tax-payers know, his chances of having his claim to them accepted would, apart from unlawful means, be very uncertain. We note that our correspondent would also give an affirmative reply to the first question. He gives some examples. But perhaps the most obvious example, and one which illustrates, we hope, the sweet reasonableness of our position, can be given in terms of travelling expenses. A man who has to travel in the course of his work is allowed, let us say, motor car expenses for all his journeys, but being thrifty, energetic and, perhaps, ascetic, he often foregoes the luxury of a car and cycles instead. We feel sure that not even the most rigid of moralists would suggest that he is bound to take account of this in making his income tax returns and claim for expenses.

To the second question we have given a negative reply, because here the tax-payer makes false statements in his returns. Thus he uses immoral means[1] to obtain certain allowances. He states that expenses are incurred in a particular way, for specified items, whereas they are not. If it be maintained, as is suggested in the query, that the allowances obtained are no greater than law and equity would grant in the case—it may be said in reply that, nevertheless, the means used are immoral. And the end does not justify the means. As Davis puts it :[2] 'No countenance can be given to the employment of fraud, deceit or lying in the matter of income tax returns.' Moreover, we may very fairly query the suggestion that expenses which

[1] We have refrained from calling the means 'unjust.' There is a difference of opinion upon the point and we are not asked to take sides. Crolly, *De Restitutione,* n. 1017, writes: 'Si autem mendaciis, aut aliis mediis illicitis utatur ad solutionem evitandam certo peccat contra veracitatem, sed quaestio est utrum violet justitiam.' Cf. nn. 1018—21.

[2] *Moral and Pastoral Theology,* ii, p. 339.

come under those allowed by law arc not, *de facto,* allowed in a particular case. The tax authorities state that expenses incurred wholly, exclusively and necessarily in the performance of the duties of one's office or employment may be claimed. These same authorities are competent to decide what expenditure comes under the heading of their own regulation. If an individual disagrees with their interpretation and thinks that his rightfully due expenses are not being allowed, he may appeal to the Courts of law for redress.

DOUBTFUL TESTAMENTARY CAPACITY AND DISTRIBUTION OF DECEASED'S ESTATE

A lady, who has no relatives, dies. A will is made leaving the estate to charity. She is told of the charity, and makes no demur. It is supposed that she was somewhat dazed at the time, but she was never just normal. After her death it was found that a solicitor had already made a will leaving the estate to himself and his clerk. The doubt is about the normality of the deceased. It is held that a will made by a solicitor in his favour, in such a case, is invalid. The solicitor in question does not bear the highest reputation. In case of restitution to whom should it be made ? The solicitor has made no claim.

Quaeritur.

A person who is not of sound mind, memory and understanding is incapable by natural law of making a valid will.[1] In addition, civil law voids a will which is made by one subjected, at the time of making it, to force, fraud or undue influence.[2] There is apparently very grave doubt as to the natural testamentary capacity of the testatrix in the case submitted. Two completely contradictory wills have been produced—seemingly without any revocation clause in the second. When the will in favour of charity was made, it is not clear that the testatrix understood what she was doing. ' It is supposed that she was somewhat dazed '—how much that means it is hard to say. We have even less evidence as to her mental capacity when she made the prior will in favour of the solicitor and his clerk. We are told that she ' was never just normal.' The phrase is delightfully, but unhelpfully, vague. It could cover most stages from slight oddity to insanity. But let us suppose, for a moment, that the testatrix was of sound mind when she made the first will, and that she was not at that time subjected to force, fraud

[1] Cf. St. Alphonsus, *Th. Mor.,* l. iii, nn. 941, 942 ; Crolly, *De Contractibus,* n. 334.

[2] Cf. Davis, *Moral and Pastoral Theology,* ii, pp. 369, 370.

or undue influence, then, of course, she could have made a valid will. The solicitor and his clerk are not precluded from being beneficiaries unless, in addition to drawing up the will, they were the witnesses who attested it. Normally, in the case of a will, undue influence is not presumed merely from the fact that a certain person benefits under it.[1] Nevertheless all the circumstances of the case before us combine to give rise to serious suspicion that unlawful influence was used regarding the first will. We have, according to the evidence at our disposal, a testatrix who was sub-normal, a solicitor, whose reputation is considered doubtful, drawing a will in his own favour—and who now does not press his claim, by which is probably meant that he does not seek a grant of probate.

Our correspondent does not give us sufficient evidence to give anything like a definite decision upon the validity of either will. It is only possible for us, therefore, to state general principles, and to point to conclusions which would follow if certain hypotheses are verified. We take it, from the statement of the case, that both wills covered the entire estate of the deceased. If, then, the will in favour of charity were valid by natural law, its terms should be duly implemented[2]—since, as subsequent in time and as dealing with the entire estate, we may presume that it revokes, at least implicitly, the former will in favour of the solicitor. But if the will in favour of charity were not thus valid, the question arises as to whether the former will was valid by natural and civil law. If it was not (or if the beneficiaries were also the witnesses) its provisions cannot be upheld. On the evidence it seems that the validity of both wills is questionable, and the matter should be submitted for judicial decision—unless the solicitor and his clerk are prepared to forego, in favour of charity, any semblance of a claim which they may have. We assume from the statement of the query that there are no relatives who have rights to a share of the estate. Our correspondent asks us about restitution. Since apparently the will has not been yet admitted to probate, there is rather question of disposal or distribution, and civil law is competent, in such cases of doubt, to decide how the estate of the deceased may equitably be disposed of, or distributed.[3] The circumstances are very similar to those of a case of intestacy.

[1] Ibid.

[2] This would apply even if the will lacked formalities required for validity by civil law. Cf. Canon 1513, §2; Wouters, *Th. Mor.,* i n. 827; Iorio *Th. Mor.,* ii, n. 872.

[3] Cf. Priimmer, *Th. Mor.,* ii, n. 277; Davis, op. cit., p. 371.

INJUSTICE IN FRAUDULENT ALTERATION OF TENDERS

A quantity surveyor tendering for a contract priced the scheme so well that his estimate was £500 less than that of any other applicant. A friend of his in the employ of the architect who had seen all the tenders, congratulated him on his achievement and gave him details of the tenders received. Whereupon the quantity surveyor went to the architect and asked for the return of his tender on the plea that he had omitted the price of one section of the building. The architect at first refused as it was contrary to all rules to do so ; but, afterwards, fearing that the quantity surveyor might be dismissed, he returned the tender. The quantity surveyor rearranged his figures raising the total estimate by £480 and again submitted his tender. As his tender was still the lowest, by about £20, it was accepted. When the contractor heard what was done, he was quite satisfied and gave the quantity surveyor £10 as remuneration.

Doubtless the quantity surveyor was the evil genius of the whole transaction. Did he sin grievously against charity or justice ? Is he bound to restitution and if so to whom ? In what way did the others sin, if at all, the contractor in gaining £470, the architect in returning the tender, the clerk who set the scheme in action by revealing his employer's secret ?

Studens.

Our correspondent has certainly gathered together a complicated set of facts, and it is not easy to assess the responsibility of the various participants in the whole affair. At the outset it should be pointed out that it is an accepted principle of moral theology that strict justice is violated and that, consequently, an obligation of restitution arises, whenever unjust means are used to prevent one from obtaining a benefit—even though one has not a strict right to the benefit in question.

Qui alium impedit a consecutione boni ad quod strictum ius non habet, sed id facit mediis iniustis contra iustitiam peccat et ad restitutionem tenetur.[1]

In the case submitted by our correspondent it cannot, perhaps, be said that the final altered tender was an unjust price for the projected work. But, at the least, the alteration of the tender deprived the customers of a benefit to the extent of £480. The issue then is whether the means used, principally by the quantity surveyor, were unjust. In our view they were. The submission of tenders has what might be called the *ratio concursus.* Certain conditions are laid down and implied in the submission of sealed tenders. The quantity surveyor violated these conditions.

[1] Noldin, *De Praeceptis,* n. 430.

He used knowledge wrongfully revealed, and unfairly managed to have his tender returned and altered. In this way he unjustly deprived the customers of a benefit. In our view, then, strict justice was violated and an obligation of restitution arises in the case described by ' Studens.'

On whom does this obligation rest? It rests firstly on the contractor who, though only an accessory after the fact in the use of unjust means, is the primary beneficiary of the whole procedure. He might technically be described as a deliberate *participans in praeda.* He is the possessor of a benefit of which the customers were unjustly deprived. He is bound to restitution to the extent that he has unjustly benefited at the customers' expense—including the £10 which he gave to his quantity surveyor, either as a gift, or on foot of an implied *contractus turpis.* The quantity surveyor is bound *in solidum conditional* to make restitution—that is to say, he is obliged to re-imburse the customers to the full extent of their consequential loss, if the contractor fails to do so.

It is particularly difficult to assess the extent of the responsibility of the architect and his clerk. Both clearly have acted wrongfully. Indeed both seem to have violated an implied contract. The architect should not have returned the tender to the quantity surveyor. As our correspondent notes, in returning it he went against all the rules. He could easily have checked the tender to see if, as alleged, the price of one section of the building had been really left out. In failing to do so he was guilty of neglecting an obvious precaution and was thereby unfair to his clients. The clerk, in turn, should not have given information about the content of the various tenders. Presumably there was an understanding between him and the architect that office secrets should be faithfully kept. Yet, both the architect and his clerk seem to have acted in good faith. Moreover, their actions were the occasion rather than the *causa per se* of the resultant loss to the customers. Consequently, the architect and his clerk cannot be described as *damnificatores vere efficaciter etformaliter injusti* and so are not bound to make restitution for the loss incurred by the customers on foot of the altered tender.[1] But the architect is not entitled to his full fee for his services to his clients. He certainly has failed them in one respect.

[1] Cf. Noldin, op. cit., nn. 454-9.

THE ORDER OF PAYMENT OF CREDITORS BY AN INSOLVENT DEBTOR

Caius is in debt to several people. It is doubtful if he will ever be out of debt, but he keeps on trying to pay and will not voluntarily seek a declaration of bankruptcy. Is Caius bound in conscience from natural or civil law, to prefer any of his creditors ? Is he justified in preferring certain creditors ? If Caius is in danger of death is the situation altered ?

P. O. F.

It is an accepted theological principle that a debtor who cannot pay all his creditors in full must observe the prescriptions of the natural law and of just positive law in regard to the preferential order of payment.[1] The natural law clearly indicates that a first priority of right to payment is vested in creditors whose property is unjustly held *in specie* by the insolvent debtor. Such property must be restored in full to the rightful owner even though this will imply that other creditors may get nothing.

Si debitor habeat rem alienam in specie, domino reddenda est, etiamsi alii creditores nihil accipiant, quia res clamat domino.[1]

This would apply to property stolen by the debtor, to property rented or lent to him for a period which has elapsed or to property found by him. Next in order come creditors who hold a mortgage on the debtor's property. These creditors, in virtue of their contract, are entitled by the natural law to a certain priority of payment from the insolvent debtor. If payments are due on foot of several mortgages on the same property a time order of discharge should normally be followed ; that first contracted should be paid off first.[3] Indeed, it may be said generally that the natural law seems to require that longer standing debts should, *ceteris paribus,* be discharged before those more recently contracted. The principle *qui prior est tempore est prior jure* might be invoked here. The longer a debt is due the greater, as a rule, is the consequential loss to the creditor. Needless to say the Statute of Limitations which bars, after a statutory period, the legal right of action for the recovery of certain debts, does not extinguish the debtor's obligation in conscience.[4] Debts which are the result of criminal acts or

[1] Cf. Lchmkuhl, *Th. Mor.,* i, n. 1219 ; Prümmer, *Manuale Th. Mor.,* ii, n. 236.
[1] Crolly, *De Restitutione,* n. 1117 ; cf. Noldin, *De Praeceptis,* n. 507.
[3] Cf. Crolly, loc. cit., and *De Contractibus,* nn. 370 et scq.
[4] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 291.

which originated in an onerous contract should, in the nature of things, be given some priority of discharge over debts based on a gratuitous contract. The natural law also indicates that very poor creditors and worker creditors in relation to wages earned, should receive preferential discharge, in accordance with their needs, of the debts due to them.[1] A debtor who voluntarily selects, for preferential payment, one or more of many equal creditors, to the consequent detriment of those not selected, is guilty of injustice. Such action by the debtor would deprive some of his creditors *of* the opportunity of receiving their fair share of the debt due to them. The foregoing are the main provisions[2] of the natural law on the matter under consideration.

Positive civil law can and does, especially for cases of bankruptcy, lay down regulations which determine the order of preference among the creditors of an insolvent debtor. These regulations of civil law, if they do not conflict with the provisions of the natural law,[3] are binding in conscience on the debtor and, *post sententiam judicis,* on the creditor also.[4] In many civil legal systems priority of payment is ordered in regard to certain debts—such as those contracted on foot of rates, taxes, wages, etc. In the case of one who has died insolvent, funeral expenses, medical expenses, legal costs in relation to probate and administration are usually set down as a first charge on the estate of the deceased.[5]* If a debtor files a petition for a declaration of bankruptcy he is bound in conscience to follow the just regulations of the civil law.[0] An insolvent debtor who, in view of his impending bankruptcy, makes payments to particular creditors —payments which are outside his ordinary manner of business and which were not specially demanded—is guilty of fraudulent preferment at law if the payments were made within three months of filing the petition for a declaration of bankruptcy. These preferential payments are void in law and are a violation ofjustice *ex parte debitoris.* The court may order their restoration to the receiver. *Post sententiam judicis,* the fraudulently preferred creditor is bound to make this restoration.[7]

We have outlined the relevant provisions of the natural and

[1] Cf. Noldin, loc. cit.
* Some of the provisions bind injustice, others in charity. Cf. Noldin, ibid.
[2] Some of these regulations, such as those which favour proprietary creditors, simply repeat the provisions of the natural law.
[3] Cf. St. Alphonsus, *Th. Mor.,* l. iii, n. 680.
[5] Cf. Crolly, *De Contractibus,* n. 370.
[4] Cf. Jone-Adelman, *Moral Theology,* nn. 363 and 367.
* Cf. Davis, op. cit., p. 350.

positive law in regard to the order *of preferment of the* creditors of an insolvent debtor. Our correspondent, in the light of his fuller knowledge of the circumstances, may be able to apply these provisions more closely to the particular ease submitted. We cannot do so, as the information available to us is indefinite and insufficient. We know that Caius is an insolvent debtor; but we know nothing of the nature of his debts. There may be among his creditors some who are entitled by the natural or positive law to receive preferential treatment; in which hypothesis Caius should conform to the requirements of these laws. On the other hand, there may be no great discrepancy in the status of his creditors. In these circumstances Caius should continue, as far as possible, to pay an equitable share or instalment to all. The instalment paid to creditors of long standing and to poorer creditors may be proportionally somewhat greater than that paid to other non-privileged creditors. The situation in regard to the question at issue would not be materially altered even if Caius were in danger of death.

AN OBLIGATION OF RESTITUTION ARISING FROM THE USE OF UNJUST MEANS

I should be grateful for a discussion of the following case :

A prevents B from extinguishing a fire which has accidentally occurred in the house of C. As a result of the interference of A, the house is burned down, (i) Is A bound to make restitution if he prevented B by *just* means from putting out the fire ? (ii) Is A bound to make restitution to C, the owner of the house, if his interference consisted in the use of *unjust* means ?

It is pre-supposed that B was under no special obligation to guard the property of C.

Perplexed.

The case submitted by ' Perplexed ' is discussed in some form by very many of the recognized authors. But the principles involved are very interesting and are well worth re-stating here. In the case as outlined, A has no strict right to the services of B : there is no contract, express or implied, by which B is bound to safeguard the property of C. Consequently—leaving aside for the moment the question of A's interference—B's obligation to extinguish the fire arises only from charity. And he would be excused from this obligation if the effort to save the house were to involve disproportionate loss for him—say grave risk to life or limb. In the circumstances then, B, at all

events, was not guilty of any violation of strict justice. Hence no obligation of restitution arises for him.

If A used *just* means to prevent B from extinguishing the fire, then again there was no violation of strict justice and the question of restitution does not arise.[1] As has been noted, B's failure to act does not contravene any strict right of C. And A's prevention of B's action is not unjust since, *ex hypothesi,* A has used only just means.

If, however, A used *unjust* means to prevent B from extinguishing the fire the situation is altered. A new factor appears in the case. For C has a strict right, though only a *jus ad rem,* to a fair chance of B's services, which is only another way of saying that C has a strict right that unjust means be not used to his detriment, to prevent B from intervening to save the house, if B wishes to do so. Thus we might also describe C's right as conditional: he has a right to B's intervention if B wants to help.[2] The action of A contravenes this right and is, therefore, a violation of strict justice involving, *suppositis supponendis,* the obligation of restitution. In the circumstances, the injustice and the consequent obligation arise from the use of the unjust means. It does not matter whether these means are used directly against the person who suffers the ultimate loss *(jn casu* C) or against the person who is debarred from preventing this loss *{in casu* B). In Aertnys-Damen we read: [3]

Nihil refert utrum medium injustum directe adhibeatur respectu illius, qui *daturus* est bonum an vero respectu illius qui bonum *accepturus* est, v.g. utrum aliquem vi impediat a testamento condendo an vero mendacio suadeat ut haereditatem sibi delatam repudiet. Sufficit quod alter jus habet ne tali medio a boni consecutione impediatur.

Thus, in the case under consideration, A might have prevented B from intervening to save the house by denigrating the character of C. Such a procedure would obviously be unjust to C—and on a double count involving, as it does, defamation as well as the consequent loss of property. Or A might have used physical violence or unjust threats against B to prevent his intervention. In which case there would be injustice done to B as well as the resultant injury to C. These are clear examples of the use of

[1] Cf. Jorio, *Theol. Mor.,* ii, n. 715.

[2] Cf. Lacroix, *Th. Mor.,* ii, n. 69. [3] Qui Caium per mendacium impedivit ne Titio daret eleemosynam dicendo eum non esse pauperem . . . tenetur restituere pauperi quia licet jus absolutum non habuerit ad eleemosynam tamen habebat jus conditionatum habendi illam si Caius dare vellet et habebat jus absolutum ne sic inique impediretur; hoc autem jus damnose violatum est · ergo debet is, qui violavit, damnum reparare.'

»*Th. Mor.,* i, n. 738, nota 2.

unjust means. The *radix* of restitution in cases in which such means are used to prevent another from attaining a good (or escaping an injury) is *injusta damnificatio.* The use of unjust means by A, who presumably is theologically culpable, is the cause of the injury which resulted to C. Hence, all the conditions for imposing an obligation of restitution are present: A's action is *vere, efficaciter et formaliter injusta.* He is bound to make restitution to C.[1]

We have noted earlier that many of the authors discuss the principles we have outlined and applied here. It is true, however, that the authors generally consider only the more positive question of preventing a person, by unjust means, from attaining a good. We are concerned here with the question of preventing, by unjust means, the preservation from injury of a third party. But the same principles apply to both types of case. As Noldin writes:[2]

> Qui aliquem impedit, ne damnum ab alio avertat, eadem ratione contra iustitiam agit et ad restitutionem tenetur, atque ille, qui alium a bono consequendo iniuste impedit. Sic qui aliquem vi allata impedit ne ignem domui proximi appositum exstinguat erga proximum ad restitutionem tenetur.

The principles are clear. But their application may give rise to difficulty in some cases, as it may not be easy to decide whether the particular means used should be classified as unjust. Violence, fraud, calumny, detraction, injurious lies, are all obviously unjust. But these do not exhaust the category of unjust means. To quote Noldin again:[3]

> Notandum est non solum fraudes, mendacia et criminationes sed etiam importunas preces et blanditias molestas quibus alterius libertas impeditur esse media iniusta.

All lies which effectively deter one from intervening to prevent injury to another must, we think, be regarded as unjust means. And, in fact, most authors list lying, without any further qualifications, among these means. Moreover, it would seem that all objectively immoral procedures[4] which in any way

1 The amount of restitution would be proportioned to the extent, *pro rata spei,* that B, if unimpeded, could have prevented the loss to C. In the case it seems that he could have prevented all, or nearly all, the damage incurred.

2 *De Praeceptis,* n. 430.

3 Ibid.

4 St. Alphonsus, *Homo Apostolicus,* tract, x, n. 61 (cf. *Th. Mor.,* l. iii, n. 582), writes: 'quisque habet ius ne malis artibus impediatur, ne aliquod bonum, quo non est positive indignus, consequatur. Et idem dicunt Salmant. si precibus importunis, aut metu reverentiali impedis.' Earlier, however, St. Alphonsus (*H. A.,* n. 58) says that there is no obligation of restitution if the means used *(consilium, preces)* are only violations of charity.

restrict or destroy one's liberty and desire to intervene to avert injury from another, should in this context be classified as unjust means, and their use is a basis for restitution. The right of the other person to a fair chance of having the injury averted is violated.

RESTITUTION FOR BETTING DEBTS

John Brown is a well-to-do man with a salary of £1,000 per annum and prospects of falling in for a considerable amount of property. He is of extravagant habits and addicted to gambling. In particular he has been betting steadily in large sums with one or two bookmakers for a number of years.

Brown has been on a drinking bout recently, and while still on this bout went to a race meeting. He might be described on the occasion as under the influence of drink, but by no means drunk. While in this condition he bet on credit with some bookmakers with whom he had been doing business for a number of years and who knew him to be in the habit of betting heavily. Brown, however, did not realize how deeply he had been involved (in fact he thought he might have been winning) until the next day he discovered he had lost about £1,200.

The bookmakers took proceedings against him for the £1,200 and he made an offer of a percentage of his liability to settle the case—which was refused. The case came on in Court, and his solicitor pleaded the Gaming Act, as a result of which the case was dismissed. The Gaming Act (1845) is a British statute which applies to Ireland, and its effect is to make all contracts by way of gaming and wagering null and void. The Act applies to bets on races and if it is pleaded by defendant's advocate (as in this case) the action will be dismissed with costs against the plaintiff. The Act may be considered good in principle, as it was passed to discourage gambling. There have been several other statutes passed for the same purpose both before and after 1845.

If Brown had won and sued the bookmaker, the latter could likewise have pleaded the Gaming Act. But normally no bookmaker would do so because he would be published as a defaulter, and this would mean that no one would bet with him in future. Of course Brown, by pleading the Gaming Act, will also be treated as a defaulter and cannot bet on credit—but this would mean much less to him than it would to the bookmaker.

It has been said that Brown is a well-to-do man and could certainly pay the £1,200 in time. What are the moral obligations (if any) regarding restitution ?

Interested.

A bet or wager, duly entered upon, is a valid onerous bilateral contract in natural law.[1] Presupposing for the moment, then, that John Brown duly entered betting contracts with the book-makers, he is morally bound to make restitution to the full extent of his debt of £1,200 (provided, of course, no condonation is made by the creditors). On the evidence he cannot plead inability to pay. While the civil laws of many countries (including Ireland and England) void the betting contract in the civil forum, so that no action lies for the recovery of betting debts, these laws do not extinguish the obligation in conscience which arises from the naturally valid contract.[2] It is true that the Gaming Act is good in principle, but that does not mean that it must therefore be held to destroy the moral obligation of the gaming or wagering contract. The purpose of the Act is adequately obtained by the voiding of the contract in the civil forum.[3]

It may be asked, however, in regard to the case under discussion, whether Brown really entered a naturally valid betting contract. While there is no evidence of fraud or deceit, two reasons might be advanced against the validity of the contract. It might be said firstly that Brown was not *sui compos* or, at least, that he was not capable of giving the deliberate consent which is necessary for a valid contract.[4] The evidence submitted creates a strong presumption against this plea, which must, therefore, we think, be rejected. Brown, though under the influence of drink, was by no means drunk. He is a man of considerable betting experience and his habitual knowledge in its regard would not be easily clouded.

As the second reason against the validity of the contract it might be argued that Brown was in serious error in regard to its object. This reason might be linked up with the former: it might be claimed that the error resulted from the semi-ebrious state. It is much more likely, however, that it was due in greater degree to some intricate system of betting favoured by Brown. The margin of error was, indeed, considerable. Brown thought he might have been winning: in fact he had lost £1,200! But it must be remembered that this sum, which seems so formidable, represents Brown's total liabilities as the net result

1 Cf. Prümmer, *Th. Mor.,* ii, 315; Jorio, *Th. Mor.,* ii, n. 1032.

2 Cf. Crolly, *De Contractibus,* nn. 676-9. 4 Lex nostra contractum irritat in foro civili, minime vero in foro conscientiae,' n. 679. Cf. Davis, *Moral and Pastoral Theology,* ii, pp. 316, 356; cf. Merkelbach, *Th. Mor.,* ii, n. 601, 3.

3 Cf. Crolly, loc. cit.

4 Cf. Jorio, op. cit., n. 805 et seq.

of, presumably, several distinct betting contracts—rather than the object of any particular contract. Moreover, Brown was a habitual gambler for large stakes. It is possible, and likely enough, that he was well aware of the amounts bet on each race, though he did not realize the extent of his total commitments. From the evidence it seems to us that the error of which there is question was not such as would invalidate contracts between Brown and his bookmakers.* In our opinion, therefore, the bets were valid in natural law and Brown is morally bound to make restitution as already explained.

CASES OF RESTITUTION

At a recent theological conference there was considerable difference of opinion as to the distinctions to be made and in the conclusions to be arrived at in the following justice cases :

(1) A man has taken £100 secretly from his employer on the plea that it is due to him. He is certain that he has not been paid a family wage to that extent. Is he bound to restitution ?

(2) One has nothing to do with a theft except that one saw it and knows the thief. He accepts a bribe of £10 from the thief not to report him. When is he bound to restitution, for how much and to whom ?

(3) A man receives £50 as a gift from one he knows to be sunk in debt with no hope of being able to meet his creditors. Does the donor sin against justice ? Is the donee bound to restitution ?

I should be grateful for your views.

Pastor.

(1) The conditions under which occult compensation is justified may briefly be stated thus : it is lawful to recover secretly from another a debt to which one has a strict and certain right, provided the debt cannot be recovered otherwise—that is by lawful non-secret means—and provided undue injury does not result, from the occult manner of action, to the debtor or to any third party.† The first condition, namely that the debt, for which occult compensation is made, be a certain debt, and of strict justice, is the most important consideration. If this condition is verified no obligation of restitution can arise, *per se,*

* Cf. Prümmer, op. cit., ii, n. 257.

† Cf. Prümmer, *Manuale Th. Mor.,* ii, n. 88; Merkelbach, *Th. Mar.,* ii, n. 413.

from the occult compensation. For in this hypothesis what was taken occultly was really the property *of* the person who took it.

The question of occult compensation for deficiencies in wages is particularly difficult.[1] For one thing it is not easy oftentimes to decide when the wages paid are strictly unjust. This may be clear in isolated cases, but generally it will not be dear. It would obviously be dangerous, and would open a wide way to self-deception if the decision as to what constitutes a just wage were left entirely to the employee. This would be tantamount to setting him up as a judge in his own case. Moreover, if an employee agrees completely *freely* to wages, they can hardly be regarded as strictly unjust and cannot provide a basis for occult compensation.[1]* These are some of the considerations which doubtless lay behind the condemnation by Pope Innocent XI of the proposition :

Famuli et famulae domesticae possunt occulte heris suis surripere ad compensandam operam suam, quam maiorem iudicant salario, quod recipiunt.[8]

A further difficulty is presented in our correspondent's query in which the employee contends that the employer did not pay him a family wage. This raises the moot question whether a family wage is certainly due in strict justice. We cannot enlarge on this question here. We believe that a family living wage is certainly due in strict justice. But there still remains for determination the exact amount which would constitute such a wage, and it seems to us that it is a function of social justice to make this determination.[4]

By now it will be abundantly evident that ' Pastor's ' apparently simple question does not admit of a simple solution. Various hypotheses and inquiries must be made. But, as a general reply to the case as stated, it can be said firstly, that if the wage received by the employee, for honest whole-time employment, did not measure up to a standard which would, in common estimation or in law, be regarded as a family living wage, he is entitled to compensate himself occultly to the extent that his wage falls below this standard—provided he has no other means of redressing the situation, and provided no further injury is done to the debtor or to a third party. We assume in all this that the employer is able to pay the higher wage. With regard

[1] Cf. Noldin, *De Praeceptis,* n. 428.

[8] In these circumstances it will be open to the employee to seek higher wages.

[8] Denzinger-Bannwart, *Enchiridion Symbolorum,* n. 1187.

[4] Cf. Merkelbach, op. cit., n. 554.

to the more particular point raised : the employee is not bound to make restitution for the £100 occultly taken, or for any part thereof, provided it is clear that it represents no more than what is already strictly due on foot of a deficient family wage. The confessor should not, however, accept without careful questioning and examination the statement of the employee.

(2) This is a case of negative co-operation in injustice. The person who witnessed the theft and knows the thief—and, supposing he could do so without grave inconvenience, did not prevent the theft or report the thief, may be classed as *non-obstant* and *non-manifestons.* It is a well-recognized principle that negative co-operators in injustice are not bound to restitution in regard to the injury done unless they were antecedently bound, *ex officio,* that is in commutative justice, to prevent the injustice.[1] In the case submitted by our correspondent, there is no indication whatsoever that the person who witnessed the theft was under any contractual or strict justice obligation to prevent the theft or to report the thief. He may be bound in charity to do this. He is so bound if it can be done without disproportionate inconvenience. But even if he is bound in charity, he may nevertheless retain, without any violation of justice, the bribe which he has accepted, *post factum furti,* as the price of his silence—assuming that he has remained silent. If the witness may, without injustice, gratuituously remain silent, there is no good reason why, as far as strict justice is concerned, he may not accept and retain a price for his silence.[2] It may be objected that, in the hypothesis that the witness of the theft is bound in charity to report the thief, a contract to remain silent is invalid and that, therefore, the witness has no title to the payment made under this contract. Here we have the hoary problem of the *contractus turpis.* And it is widely held, on various grounds,[3]* that the price paid for the fulfilment of an unlawful condition in a contract may, *post factum,* be retained.[4] St. Alphonsus says simply :[5]

Contractus sub conditione operis turpis sive repugnantis iustitiae sive alteri virtuti . . . verificata conditione, iure naturae obligat.

It may be well to add here that we have confined our reply to the terms of the question, which is concerned solely with an

[1] Cf. Jorio, *Th. Mor.,* ii, n. 665 ; Prümmer, op. cit., n. 109.
[2] Cf. Noldin, op. cit., n. 496 ; Prümmer, op. cit., n. 110 ; Jorio, op. cit., n. 668.
[3] Cf. Noldin, op. cit., n. 538.
[4] Cf. St. Thomas, *S.T.,* 2-2, 87, a. 2.
[5] *Th. Mor.,* l. 3, n. 712.

obligation of strict justice—the obligation of restitution. There is no doubt that failure to prevent theft or to reveal the thief, even in the case of those not bound *ex officio* to do so, must frequently be classed as an anti-social crime.

(3) The gift of an insolvent debtor is unjust on the part *of the giver and* acceptor.[1] The giving of the gift means that the creditors are deprived, *pro tanto,* of payment *of* what is due to them. These creditors have a strict right that gifts be not made out of what should come to them. It is accepted, however, that the gifts of an insolvent debtor (except he is a declared bankrupt) are valid.[2] Consequently, if the donee is unaware of the insolvency of the donor there is no strict obligation of restitution. In this hypothesis the donee does not formally co-operate in the injustice done to the creditors. But if the donee is aware of the insolvency, as in the case proposed, he is bound to restore the gift to the donor. Some writers say that this obligation of restitution arises only if the donee, being aware of the insolvency, induced the insolvent debtor to make the gift,[3] but, in our view, it arises also even when such inducement has not been used.[4] We may add that a debtor who has been declared a bankrupt cannot make valid gifts from the property regarding which the writ of bankruptcy runs.

RESTITUTION BY A 'MALA FIDE' POSSESSOR OF A FARM

I have been asked, outside Confession, about the following case. Some years ago, as a result of interference with a will, Caius got possession of a small farm which he has, in the course of time, greatly improved. It is not clear now whether Caius personally interfered with the will. In any case he was aware of, and consented to, the interference. The man to whom possession of the farm should have gone is still alive and well, but Caius is seriously ill and it is thought that he cannot live very much longer. He is anxious to set everything right and wishes to know what his obligations are now.

C. C.

[1] Cf. St. Alphonsus, op. cit., l. 3, n. 722.

[2] Crolly, *De Contractibus,* n. 325, holds that the contract is invalid: 'Donationes tamen factae ab eis qui acre alieno gravati sunt, irritae sunt nisi donans, tempore donandi habeat alia bona ex quibus omnia sua debita solvere possit.' But cf. Genicot, *Th. Mor.,* i, n. 610 ter.; Noldin, op. cit., n. 548.

[3] Cf. Vermeersch, *Th. Mor.,* i, n. 444

[4] Cf. Aertnys-Damen, *Th. Mor.,* i, n. 8U4.

Caius was and is a *mala fide* possessor. This remains true whether or not he personally interfered with the will. The interference was made with his knowledge and consent, and he availed himself of the benefit deriving from the altered will. As a possessor *in mala fide,* Caius is bound to restore the farm itself, as it now is,[1] together with a sum equivalent to the value of its fruits over the years—except in so far as these fruits were due exclusively to his own industry. It may well be that some of the improvements of the farm may be classed as industrial fruits. In this eventuality, the improvements would offset, to some extent at least, the *lucrum cessans* and the *damnum emergens* of the true owner.

It occurs to us that the best practical solution in the circumstances is that Caius should bequeath the farm to its real owner. This would obviate any difficulty regarding the revelation of the earlier crime. In addition to the farm, Caius should also leave to the true owner a sum corresponding to the losses sustained by the latter as a result of his being deprived of the property for so long. As we noted earlier, however, the improvements effected on the farm, if they are industrial fruits, may compensate, in part or in whole, for these losses. This is a matter to be estimated according to the particular circumstances. Perhaps we should mention that if, perchance, the improvements more than compensate for any loss on the part of the real owner, then Caius can meet the situation by requiring that a legacy, equivalent to the excessive compensation, be paid out of the property to some person or object which he wishes to benefit.

RESTITUTION OF GOODS BY POSSESSOR IN BAD FAITH WHEN THE OWNER IS UNKNOWN

I should like to know what you think of the opinion of Father Wouters who, in his *Theologia Moralis,* vol. i., n. 1011, holds that a possessor in bad faith may retain his ill-gotten goods when the true owner, amongst many possible ones, cannot, after diligent inquiry, be discovered. I consider the view neither extrinsically nor intrinsically probable, and by no means safe in practice. The question is ably treated in the *Irish Ecclesiastical Record* of 1882 and in *Periodica,* 1927. An answer will oblige.

Pastor.

[1] We assume that the property, though greatly improved, is not essentially changed.

As many of our readers may not have a copy of Wouters' *Theologia Moralis* it may be well at the outset, for the sake of clarity, to quote the paragraph to which our correspondent refers. It reads r[1]

> Si ignoratur, *cui ex multis,* res competat, possessor potest eam retinere. Cum enim, ut in casu, nemo determinatus ius vere probabile in rem habeat, et ut supponitur, spes ulterioris notitiae comparandae absit, illa pro re nullius haberi potest vel saltem ut talis tractari ; idque non solum a possessore bonae fidei, quod omnes concedunt, verum ut videtur etiam a possessore malae fidei ; nulla enim apparet ratio, cur hic excludendus videatur. Laudabiliter tamen suadetur, ut eiusmodi possessor rem ita possessam in causas pias impendat.

In a subsequent paragraph, which is also relevant, Wouters writes :

> *Si penitus ignoratur,* cui res competat, possessor etiam malae fidei potest eam retinere, ut dictum est de casu, quo ignoratur *cui ex multis* res competat.

It is worthy of note that Wouters maintains a somewhat similar position in other parts of his work—for instance, in dealing[2] with the obligations of one who, having found lost property, neglects to make due enquiries to discover the owner ; and again, in treating more directly with the obligations of the possessor in bad faith.[3]

We agree with our correspondent in describing this view of Wouters as being neither extrinsically nor intrinsically probable, and hence we, too, regard it as unsafe in practice.

We shall firstly consider the matter from the extrinsic standpoint. We know of no other modern theologian who advances the view espoused by Wouters. Our examination of the writers has not been, we need hardly say, exhaustive, but it has been extensive. We have confined our attention to the fairly recent writers.

As the contributor to the *Irish Ecclesiastical Record* of 1882,[4] to whom our correspondent kindly directed our attention, points out, all theologians, down to the time of Soto,[5] held that goods belonging to another should be given to the poor, or to pious uses, if the true owner could not be discovered. And this applied whether the possession of the goods in question was in good or in bad faith. St. Thomas, in reply to an objection, states the case simply :[6]

[1] *Th. Mor.,* i, n. 1011, 2.
[2] Ibid., n. 798 (Coroll.).
[3] Ibid, n. 992.
[4] P. 492 et seq.
[5] i.e. Dom. de Soto (1494–1560).
[6] *S.T.,* 2, 2, q. 62, a. 5, ad 3.

Si ille cut debet fieri restitutio, sit omnino ignotus, debet homo restituere, secundum quod potest, scilicet dando in eleemosynas pro salute ipsius . . .

From the time of Soto onwards a concession came gradually to be made in favour of the *bona fide* possessor.[1] It was held that if, after diligent inquiry proportionate to the value of the object possessed, the true owner could not be discovered, then the possessor in good faith could retain the object. Some would describe this object as having become, in the circumstances, a *res nullius*[2]—to which the *bona fide* possessor had the title of first occupancy. But no such concession has been made by the general body of theologians in favour of the *mala fide* possessor. The contributor in the *Irish Ecclesiastical Record* of 1882 could discover only one writer who departed from the general teaching on this matter, and this one writer[3] confessed that he had no extrinsic authority to support him, and that his views were opposed to the common doctrine of the schools. Similarly, to-day, we find Wouters in solitary opposition to the general body of moral theologians. It is significant that he does not give a single reference in support of his view. Not merely do the writers generally express the view that the *malafide* possessor is bound to restitution, but they give this teaching as the accepted Catholic doctrine. 'Ita docent communissime theologi,' writes Prümmer.[4] 'Communissima est sententia eaque prorsus est tenenda restitutionem esse faciendam,' says Lehmkuhl.[5]* And Vermeersch® is even more definite—

si ignoretur ad quemnam res restituenda competat, et sufficienti inquisitione dubium non diluatur : (a) si dubium *inter paucos* contrahitur, aequalitas personalis iubet ut res inter ipsos dividatur ; *(b)* si dubium sit inter multos, aut, quia dominus penitus ignoratur, res sit incerti domini, natura ratam habere nequit possessionem quam hoc titulo fur servare vellet. Quare ea se spoliare debet, eandemque pauperibus vel operi pio addicere. Conclusio ab omnibus admittitur.

The teaching of Wouters on this point, then, runs counter to what seems to be the unanimous opinion of moral theologians[7]

[1] De Lugo accepted this concession ; so did St. Alphonsus, *Th. Mor.*, l. 3, n. 589 ; and now it may be regarded as part of the generally received teaching, cf. Prümmer, *Th. Mor.*, ii, nn. 213, 234 ; Noldin, *De Praeceptis*, n. 503.

[2] Cf. St. Alphonsus, op. cit., n. 603 ; Aertnys-Damen, *Th. Mor.*, ii, nn. 673, 796 ; Noldin, loc. cit.

[3] Van der Velden, *Th. Mor.*, i, nn. 160, 161.

[4] Op. cit., ii, n. 234.

[4] *Th. Mor.*, i, n. 1022.

• *Th. Mor.*, ii, n. 676.

[7] Cf. also Aertnys-Damen, op. cit., i, n. 796 ; Noldin, op. cit., n. 503 ; Jorio, *Th. Mor.*, ii, nn. 740-2; Waffelaert, *De Justitia*, ii, n. 322 ; Davis, *Moral and Pastoral Theology*, ii, p. 348 ; Merkelbach, *Th. Mor.*, ii. n. 323 ; Crolly, *De Restitutione*, n. 1103 et seq.; Genicot, *Th. Mor.*, i, n. 552.

ancient and modern. And, since this is so, his view must be held to lack extrinsic probability.

Considered from the intrinsic standpoint, Wouters' opinion, we think, likewise lacks probability. We are primarily concerned here, it must be remembered, with the obligation of restitution of goods which have been acquired in bad faith. It may be that die text of Wouters is meant to have a wider reference, but his statements obviously cover the case of goods obtained in bad faith—that is, acquired *ex delicto.* Whenever one person acquires and holds in his possession, without due permission, goods belonging to another, the balance of justice is upset objectively. And this remains true whether the possessor is in good or bad faith. When, however, the possession is in bad faith there is, in addition to the objective violation of justice, subjective guilt on the part of the wrongful possessor. He has something which he should not have, and which he knows he should not have. The fundamental principle of restitution is that the balance of justice, which has been upset, should be restored. The balance is perfectly restored when what was wrongfully taken is restored to its owner. A steals £20 from B. Accordingly, A has £20 more than he should have; B has £20 less than his due. There is, so to speak, a two-fold disturbance of the balance. There is a plus on A's side and a corresponding minus on B's side. Both are wrong and out of order. The equilibrium is restored perfectly if the £20 is taken from A and given back to B. And natural justice and equity demand this restoration. But if B is unknown it is not possible to make this perfect readjustment. It is possible, however, and again natural justice and equity demand it in so far as it is possible, to make a partial readjustment.[1] *Ex hypothesis* it is not possible to give B his £20; it is not possible to remove the minus. But it is possible to deprive A of this £20, to remove the plus. And even though the money does not reach the objective and true owner, the disturbed equilibrium of justice will be to some extent righted, and the restitution will be partially effective. The true owner of the object is unknown or uncertain, but one thing is certain, namely, that the possessor has come into wrongful possession of what is not his own. It is true that the primary purpose of restitution is to indemnify the person who has been injured, but that is not to say that it has not other purposes which may be attained even when the primary

[1] Cf. St. Thomas, loc. cit.; cf. also ibid., a. 6, c.; Crolly, loc. cit.; *Irish Ecclesiastical Record* (1882), loc. cit.

purpose is not possible.[1] St. Thomas says[2] equivalently that it has other purposes.

Restitutio non ordinatur principaliter ad hoc, quod ille qui plus habet quam debet, habere desinat ; sed ad hoc, quod illi qui minus habet, suppleatur.

It seems to us that there is implicitly at the back of Wouters' reasoning the suggestion that, because it is impossible to make the full restoration of the equilibrium, there is no obligation to make the partial readjustment which is possible. It might *almost* as well be said that if a man cannot pay his debts in full, he is not even bound to make a partial payment which he can make, since here, too, the balance will not be perfectly restored. Or if Wouters' point is that there is no obligation of restitution unless it can be made to the injured party, it is inconsistent on his part to write in the same context :[3]

Si multi alicuius communis defraudati fuerint—puta a mercatore . . . —et nesciatur, quibus praecise damnum illatum sit, restitutio per se fieri debet emptoribus ordinariis, non autem pauperibus. . . . Atvero si emptores non censentur graviter laesi, venditor non tenetur *sub gravi* emptoribus ordinariis restituere sed *gravi* obligationi satisfacit restituendo pauperibus loci ; atque etiam a veniali excusatur, si rationabilis subest causa pauperibus restituendi, puta quia nequit emptoribus ordinariis restituere quin suspicio fiat de fraudibus praeteritis.

The foregoing is one intrinsic consideration which may serve to show that Wouters' opinion lacks probability. We might add many other considerations. The good of society demands that those who have ill-gotten goods should be compelled to surrender them.[4] Otherwise a premium is put upon

[1] These ' secondary ' or partial purposes are sufficient to justify the imposition of the obligation of restitution just as, somewhat similarly, marriage may be perfectly valid and lawful even when the primary purpose is unattainable. Another illustrative parallel might be derived from the theory of sacrifice in the Old Testament. Sacrifice was essentially a gift to God. The giving of this gift had a twofold aspect or result. It implied depriving the offerer of the victim, and then the handing of it over to God. It was not possible for the Jews to hand over their victims to God in any real or direct manner. They depended upon certain symbolic acts. But it was possible for them, in a very real sense, to deprive themselves of the victim, to put it out of human use ; and this they did by killing or destroying the victim. They went as far as they could. And their gesture had a real value. So it is in the case of the *mala fide* possessor. He, too, must deprive himself of his unjust possession in order that his gesture of repentance have real value.

[2] St. Thomas, *S. T.*, 2, 2 q. 62, a. 6, ad 1.

[3] Op. cit., ii, 1011, 3.

[4] Cf. Prümmer, loc. cit., n. 234,: " . Ex iure quidem naturali, quia tam bono communi quam rectae rationi repugnat, ut malefactor (qualis esset possessor malae fidei) ex sua malitia utilitatem reportet neque puniatur . . . Oportet enim animadvertere, iniustum possessorem non solum laesisse personam privatam, sed semper quoque societatem humanam ; ideoque quando nequit satisfacere personae privatae utpote ignotae, debet tamen satisfacere societati humanae et quidem aut per sublevamen pauperum aut per causarum piarum adiutorium.' Cf. *Irish Ecclesiastical Record,* 1882, pp. 497, 498.

dishonesty.[1] If we make the hypothesis that Woutcrs' view is right, then extraordinary and unacceptable conclusions, unacceptable we believe even to Wouters, would follow. Take the case of theft. The object stolen, once reasonable diligence has failed to find the owner, becomes the property of the thief. If acts of theft could be so skilfully planned that it would be reasonably impossible afterwards to discover the victims, then the thieves would never be bound to restitution. The hypothesis might often be verified. Natural justice demands obviously,[1] too obviously, perhaps, for proof, that a thief may not lawfully be enriched by his theft. And what applies to theft applies to other cases of *mala fide* possession.

The possessor in bad faith has no right or title to the goods which he holds.[2] If he was in bad faith from the beginning of possession he never had any title. Prescription could not begin to run in his case. Wouters suggests that when restitution cannot be made to the real owner, say even of a stolen object, then the object becomes a *res nullius* or, at least, can be treated as such, and thus it would become the property of the first occupant. Our author implicitly argues that there is, from this point of view, little difference between *bona fide* and *mala fide* possession. If in the former case, or in the case of lost property, the real owner cannot be discovered, then the object thus possessed, or found, is regarded by many theologians as a *res nullius* and may be retained by the *bona fide* possessor or finder. Wouters would argue, we think, that there may be precisely the same reason, namely, the impossibility of finding the true owner, for saying that an object stolen, or held in *mala fide* possession, becomes a *res nullius.* And there is much logic in this argument. That is to say, if an object becomes a *res nullius* simply because its owner cannot be found with reasonable diligence, it would not seem to matter whether the object was held by a *bona fide* or *mala fide* possessor. The manner of the possession seems to be a consideration extrinsic to this particular issue. But it might well be asked how far it is true to say that an object always becomes a *res nullius*,[4] in any true sense, simply because the real owner cannot be discovered. And we can reply that an object, whether held

[1] Cf. Crolly, op. cit., n. 1104, where he says that natural law demands restitution in this case as a sanction.

[2] Merkelbach, loc. cit. : 'Restituendum est quia iuri naturali repugnat ut ex re aliena quis locupletari possit per iniustitiam.'

[3] Crolly, op. cit., n. 329.

[4] Relatively few of the authors speak expressly of the object becoming a *res nullius* in these circumstances. Prümmer speaks of the *bona fide* possessor having a coloured title.

in good or bad faith, docs not become a *res nullius* simply by the fact that its owner is unknown or cannot be found. Even in these circumstances the real owner still has a claim over the object ; it is still his.[1] Here and now he has indeed lost control over it. Cut if he turns up later, so long as the object remains *in se* or equivalently, he has a right to recover it even from a *bona fide* possessor. How could that be if this object had become in any real sense a *res nullius,* to which, accordingly, the first occupant would have a just title of ownership ?[a] There is a very real sense in which ownership is indivisible. Two people cannot both together have strict and total *dominium* over one and the same individual thing.

At this point, Wouters, would, we feel sure, ask us several questions. He would probably ask us on what grounds we would justify the retention of ' uncertain goods ' by a *bona fide* possessor—since we have suggested that they may not always have become *res nullius.* He might ask us also for what reasons we distinguish between the *bona fide* and the *mala fide* possessor in this context—allowing the former to retain the goods possessed and binding the latter to restitution. To the first question we might not unfairly reply that we are not bound to justify the retention of these goods and that many of the older theologians did not do so.[3] But we submit the following considerations in reply to the second question, and in doing so we hope to suggest a more positive answer to the first question also. It is very obvious to us that there is a vast difference, from the point of view of the obligation of restitution, between a *bona fide* and a *mala fide* possessor. In the ordinary case, when restitution is made to a known owner, Wouters, no less than the other theologians, admits[4] that the obligations of the *mala fide* possessor may be wider and stricter than those of the *bona fide* possessor. Why ? Because, in one case, that of *mala fide* possession, there is moral guilt ; in the other case there is not. Perhaps the difference will become even clearer if we consider the cognate

[1] And the writers relieve the *bona fide* possessor from obligations if the object perishes on the principle *res perit domino*—leaving little doubt as to who *is* the owner.

[a] Cf. Crolly, op. cit., n. 1107. Speaking of the suggestion that uncertain goods become *res nullius* and the property of the first occupant he writes: ' Observandum esse censemus hanc doctrinam veram esse, quod ad *administrationem* non autem quod ad *dominium* harum rerum attinet.'

[3] Cf. *supra.* Until the time of Soto none of the theologians did so. Cf. Billuart, *De Just, et Jure,* 8, a. 14. It is true that the vast majority of modern writers, following St. Alphonsus, hold as probable the view that a *bona fide* possessor may retain the ' uncertain goods '—that is when the owner cannot be found.

[4] Cf. Wouters, op. cit., n. 986 et seq.

matter of unjust damage *(damnificatio).*[1] It is the universal teaching of theologians, again including Wouters,[2] that an obligation of restitution arises from *damnificatio* only when, among other conditions, the act which causes the damage was theologically culpable. *If* the act was not thus culpable there is no obligation of restitution. We prescind from the situation *post sententiam judicis.* And yet, objectively considered, the damage done by the injurious act might be exactly the same, whether or not the agent was guilty of theological fault. The objective injustice might be the same in both cases. But from the point of view of resultant subjective obligation—what a difference! We repeat: if, in doing the injury, the agent were theologically guilty, there arises the obligation of restitution; if he were not, *per se* no such obligation arises. Accordingly, the subjective guilt of the agent *in damnificatione,* is a vital factor in assessing his subsequent obligations. And it seems to us that, somewhat similarly, the subjective guilt is an important consideration in assessing obligation under the other *radix restitutionis —possessio rei alienae.* So long as a man remains in good faith there is no subjective guilt and no subjective obligation to make restitution. This is clear when the good faith is blissful. But the good faith of the possessor may be disturbed. He may suddenly or gradually come to realize that the object held is not, or may not be, his property. At this point he is bound to make inquiries to solve his doubt, to find the true owner. If he fails to make due inquiries he is guilty of moral fault and becomes, in effect, a *mala fide* possessor—with his obligations. If he makes due inquiry, there is thus far no moral fault. As a result of his inquiry he may discover the real owner. Then, of course, he is bound to restore the object to this person. If he does not, again he is guilty of moral fault, and lapses into the status of a possessor in bad faith. If the investigations duly made prove fruitless, he is not guilty of any moral fault, as we have seen, and he may retain the object.

Thus it would seem that at the basis of the obligation of restitution, or should we say, that before the obligation of restitution becomes subjectively operative, there is always

[1] It is interesting to note here that most of the authors hold that not merely the possessor in bad faith, but the unjust damnificator, is bound to make restitution to the poor or to pious causes when the true owner cannot be found; cf. Noldin, Priimmer, Lehmkuhl, loc. cit. The last mentioned writes: 'Scriptores omnes qui hac de re tractaverunt, hanc obligationem propugnant eatnque clare docent non tantum quando bona aliena iniuste possidentur, sed etiam, quando et sola damnificatione debita contracta sunt.'

[2] Op. cit., n. 995.

moral fault.[1] Remove all such faults at every stage, and the agent or possessor is not bound to undergo loss or forego gain as a result of his past action. If we are pressed to say by what title the *bona fide* possessor may retain the object held when he cannot do so simply by first occupancy, we could answer that it may be retained in virtue of the coloured title on which the good faith was based, in virtue of prescription which has begun to run, in virtue of the civil law.[2] And it must be remembered that this right to retain the 'uncertain goods' is conditional, not absolute. The condition is that if the true owner becomes known, then so long as these goods remain *in se* or equivalently, they must, as we have noted, be restored to him. But much of this is beyond the scope of our query. To revert to the fundamental point: the *mala fide* possessor holds something that certainly is not his own, which he knows is not his own and the possession of which is, on his part, bound up with moral fault. In the case of *mala fide* possession, therefore, the grounds for restitution are, so to speak, cumulative. We have injury really done, moral guilt, possession of another's property. If the first two elements are, of themselves, sufficient to form the basis of restitution,[3] *a fortiori* there is ground for restitution when the third element is added. Yet Wouters says there is no apparent reason[4] why the *mala fide* possessor should be excluded from the privilege of retaining goods the owner of which cannot be found. 'Nulla enim apparet ratio cur hic excludendus videatur.' If ever there is a basis for the obligation of restitution, we have it in the case of *mala fide* possession. Natural justice demands the restoration of the balance as far as may be possible. The possessor in bad faith is bound to deprive himself of the goods unjustly acquired and held. Or, to put it the other way

[1] And Wouters himself points out (n. 995) that the obligation of restitution assumes the guise of a punishment. 'Accedit quod obligabo restituendi habet aliquo modo rationem poenae.' He uses this argument to show the necessity of theological guilt. No guilt, no punishment—he says, in effect. And that is fair enough. But we might add that it seems equally to be the law that where there is guilt, there should be punishment. But Wouters would reward, not punish, the *mala fide* possessor of uncertain goods!

[2] Cf. Crolly, op. cit., n. 1103 et seq.

[3] That they are sufficient when the injured person is known is the unanimous opinion of moral theologians; that they are sufficient, even when the injured person is unknown, is, as we have remarked earlier, the generally held view of the writers. Cf. Vermeersch, loc. cit. St. Thomas and the older theologians held that the obligation of restitution could arise 'ratione rei acceptae et ratione acceptationis rei.' Under the second heading they included damage done with moral fault—cf. *S.T.*, 2, 2, q. 62, a. 6.

[4] Loc. cit. He might have recalled that restitution has the *ratio poenae.*

round, he may not enrich himself by an act which for him was formally unjust. To quote St. Alphonsus : [1]

Fur certe non potest sibi retinere quantitatem ablatam, nam . . . praeceptum non furandi non solum prohibet nc quis alios graviter laedat, sed etiam ne ditescat notabiliter in acre alieno.

It seems strange to find us quoting St. Alphonsus against Wouters. We do not by any means wish to suggest that the latter was unaware of the teaching of his saintly Founder which we have just given. We have no doubt that Wouters could make some distinctions. He would probably comment on the word *alieno* and say that when the owner cannot be found, the object held by the possessor in bad faith is not a *res aliena* in the strict sense—but rather a *res nullius.*[2] To which we would reply—objectively at least it is a *res aliena.* We have evidence of Wouters' awareness that his doctrine was open to difficulties, in particular to the difficulty based upon the above-mentioned text of St. Alphonsus. In the context of the passage cited at the beginning of this reply Wouters puts himself the following objection : ' Nemo ex possessione formaliter iniusta commodum capiat.' To this he replies :

Ex possessione formaliter iniusta, *qua tali,* concedo ; ex eo quod occasione ciusmodi possessionis, res iam in ea conditione constituta est ut facta sit nullius vel ut tamquam res nullius possit tractari, nego.

And that is that. But it all seems suspiciously like *petitio principii.* It is assumed that the object possessed had, equivalently at least, become a *res nullius.* We would like to know when, that is, at what point and how, does possession, while remaining, *ex hypothesi,* in bad faith, cease to be *possessio formaliter iniusta qua talis?* Or does Wouters attribute some new meaning to *mala fide* possession ? Nor is the difficulty evaded by simply saying that one is enriched, not by the formally unjust possession, but solely on the occasion of this possession. When it is remembered that, in the circumstances, the possession is based upon, and inextricably linked up with, formal injustice, the occasion seems singularly like a cause.

Our readers will have noticed that we have refrained from stating, beyond what is contained in quotation, to whom restitution should be made by the *mala fide* possessor when the true owner is entirely unknown.[§] That is a separate question, a

[1] Op. cit., l. 3, n. 534.

[2] And to support this statement, he might appeal to St. Alphonsus, op. cit., n. 603.

[§] Restitution must be made to the person injured, that is to the owner, whenever this is possible. If it is found to be impossible then it is generally held that restitution may, and should be, made to the poor or to pious purposes.

discussion of which would take us too far afield now. We were concerned to show, as against Wouters, that the possessor in bad faith is bound to deprive himself of 'uncertain goods,' in other words, that this possessor may not lawfully enrich himself by, or *pace* Wouters, on the occasion of his, unjust possession. These statements simply express what is the common and traditional teaching of Catholic theologians. In the later part of our reply we have tried to establish that teaching on intrinsic grounds.

RESTITUTION OF GOODS BY POSSESSOR IN BAD FAITH

In reply to a question on restitution by possessors in bad faith you have written : 'We know of no other modern theologian who advances the view espoused by Wouters.' It appears to me that such a view, as applying to non-christians, is, implicitly at least, put forward by Genicot in case 315 of his *Casus Conscientiae* (4th edition, 1922).

Robertos.

We thank 'Robertus' for his letter. We had not noticed the solution of this *casus* previously. But then we never claimed to have made an exhaustive search of the writers. In fact we expressly stated, in the earlier reply and in the context from which 'Robertus' quotes, that our search, while extensive, had not been exhaustive. We cannot reasonably be expected to be familiar with every published solution of cases of conscience. We confess that we do not find the reading of many of those solutions very attractive. Our preference lies in other directions. We had not ignored Genicot-Salsmans. We had consulted and referred to their *Institutiones Theologiae Moralis*[1]—in which the commonly accepted view (as distinct from the unusual view of Wouters) on the matter under discussion is propounded. Not unfairly, then, we aligned Genicot-Salsmans against Wouters. And now it is suggested by 'Robertus' that the solution of *casus* 315 indicates that Genicot is really on Wouters' side, and that we were incorrect in stating that Wouters stood

Many theologians state that if the possessor in bad faith is himself poor, he may, so to speak, make restitution of at least part of what he holds to himself, as one of the poor. But clearly this retention of the uncertain goods by one in bad faith is *per accidens,* and does not interfere with, in fact, in a sense, may be said to emphasize, the validity of the principle that these uncertain goods cannot, *per se,* become the property of the *mala fide* possessor. Cf. Pnimmer, loc. cit. ; Noldin, loc. cit. ; Aertnys-Damen, op. cit., n. 797.

[1] Op. cit., p. 51, note 5.

alone. Incidentally, the solution of the case quoted is given by Salsmans not by Genicot, as the preface to the edition mentioned makes clear.[1] That, admittedly, is a very minor point. It is more important to note that the solution given, as our correspondent evidently knows, is not and was not intended to be of general application. It is really an exceptional solution given in favour *of a* convert *Jew, who* while a Jew would, of course, have been exempt from merely Canon Law. The author accepts the possibility that the obligation of restitution derives from ecclesiastical law solely and, in the light of this possibility, concludes that, in the circumstances, one might not unfairly exempt the convert from the obligation. More important still the solution does not, even in its implications, correspond exactly with the view put forward by Wouters, namely, that a possessor in bad faith may retain his ill-gotten goods when the true owner cannot be discovered—either because he is one of many possible owners or is absolutely unknown. Finally, even if the solution given by Salsmans did confirm, and correspond at every point with, Wouters' view, we should still maintain, as we maintained in our earlier reply, that this view is not extrinsically probable.[2] We fondly hoped that we had already abundantly demonstrated its intrinsic improbability.

As many of our readers may not have the work to which our correspondent refers, it is only fair to quote the case and the solution to which reference is made. We shall then set down the statement of Wouters' view with which we dealt in the earlier reply. This will enable our readers to see more clearly the force of the remarks which we have made, and the points of difference between Wouters and Salsmans will, we feel sure, become obvious, so that little further comment on this aspect will be necessary.

Casus 315 runs :

Isaac iudacus, in magna quadam opificina, pecuniariae gestioni praefuit. In modo autem quaedam computandi saepe saepius nonnullis indebite favit, aliis exinde damnum patientibus, et quidem totaliter saltem pro 500 fr.; nihil tamen lucri ipse sibi reportavit. Quodam dic videns in foro hominem amittentem marsupiolum pecuniarium, illud dextre et mala fide arripuit et inclusos circiter 100 francos sibi servavit. Ex hac autem praecise pecunia, nummum aureum 20 fr. ipse, nescio quo fato, amisit, et cum iam 30 fr. in

[1] The case is marked with an asterisk and Salsmans writes in the Preface to the 1922 edition : " Qui asterisco notantur, ne Lector putet ibi reperiri mentem ipsius P. Genicot, anno 1900 pie in Domino defuncti."

[2] This is particularly true in view of what we read in Genicot-Salsmans */rutitutioms Th. Mor.,* i, n. 552, and in editions subsequent to 1922. We may assume that the most accurate expression of the authors* mind is to be found in this work.

propriam utilitatem expendisset, reliquis 50 fr. a fure spoliatur. Nunc autem post multos annos baptizatur et rogat sacerdotem utrum pro istis actibus iniustis restituere teneatur : nullo iam pacto agnosci posse, ait, quinam laesi fuerint.

The solution given is :

In primo casu agitur pro ipso Isaac, de *mera damnificatione* sine emolumento proprio ; in altero casu, ex pecunia male acquisita 70 francos, per amissionem vel furtum quod passus est, *iam non detinet.* Iam vero, quidquid severius dicant nonnulli auctores, non nisi ubi quis adhuc ditior est re iniuste acquisita ab ignoto domino potest allegari obligatio se spoliandi. Ita enim melius dicitur quam : obligatio dandi pauperibus. Unde illa obligatio stricte sustineri potest tantum pro 30 francis quos Isaac in propriam utilitatem expendit, quibus proin pepercit bonis propriis et *adhuc ditior* censetur. Sane haec obligatio non gravis est, quia non attingitur *materia absoluta,* quae, ut patet, in tali casu sola attendenda est. Insuper cum Isaac momento iniustae acquisitionis esset iudaeus et obligatio se spoliandi iuxta plures non nisi *ex iure canonico* habeatur, non immerito dixerit quispiam Isaac tandem ad nullam stricte restitutionem teneri. Patet autem enixe suadendum esse ut 30 francos et amplius bonis operibus tribuat.

And here are the statements of Wouters' view[1] with which, it appears to 'Robertus,' the above solution corresponds :

Si ignoratur, *cui ex multis,* res competat, possessor potest eam retinere. Cum enim, ut in casu, nemo determinatus ius vere probabile in rem habeat, et, ut supponitur spes ulterioris notitiae comparandae absit, illa pro re nullius haberi potest vel saltem ut talis tractari ; idque non solum a possessore bonae fidei, quod omnes concedunt, verum ut videtur etiam a possessore malae fidei ; nulla enim apparet ratio, cur hic excludendus videatur. Laudabiliter tamen suadetur, ut eiusmodi possessor rem ita possessam in causas pias impendat. - - - *Si penitus ignoratur,* cui res competat, possessor etiam malae fidei potest eam retinere, ut dictum est de casu, quo ignoratur *cui ex multis* res competat.

We have remarked earlier, and it is worth repeating, that Salsmans' reason for his solution in favour of Isaac, however diffidently given, is that the obligation of restitution in the circumstances derives solely from ecclesiastical law by which Isaac was not bound before his conversion. Wouters, on the other hand, does not mention or apply this law in the context.[2] He would not bind *any* possessor in bad faith to restitution, once the real owner is unknown. For him there is no distinction to be made here between Christian and non-Christian ! The divergence is not insignificant.

The mention by Salsmans of the source of the obligation of restitution in the circumstances under consideration raises an interesting question on which a short discussion will be fully relevant. The suggestion has, indeed, been made by some

[1] *Theologia Moralis,* i, n. 1011, 2, 4.

[2] Note the words 'nulla apparet ratio cur hic excludendus videatur.'

writers (as Salsmans notes)[1] that the obligation of the possessor in bad faith to make restitution to the poor, when the real owner is unknown, derives solely from ecclesiastical law. The more common opinion is that the obligation comes somehow from natural law. It is very much in order, in view of our correspondent's letter, to quote Genicot who indicates the two views. He writes :[2]

> Si insolubiliter ignoratur *quis* laesus sit vel quis rei certo alienae sit dominus, et propter acceptionem et detentionem culpabilem non potest res servari ex principio possessionis, sententia communis tenet rem *pauperibus* vel causis piis esse dandam.
>
> De *argumento* autem quo obligatio illa probetur, DD. non nihil dissident. Multi enim eam reputant ex ipso *iure naturali* quod statuat : ' res male acquisita servari non potest,' saltem ob commune totius societatis humanae bonum, ne scii, periclitetur securitas rerum in consortio humano; ideo, deficiente domino, res tradenda est pauperibus vel causis piis, vel saltem ableganda est ab eo qui eam male acquisivit. Alii tamen, quibus adhaeret S. Alphonsus, eam obligationem e solo *iure canonico* satis constare existimant. Nempe universalis gentium Christianarum *consuetudo* ad omnia debita e delicto orta extendit quod in Iure Canonico de pretio usurario et de lucro ex officio immerite suscepto statutum erat.

The authority of St. Alphonsus is invoked by Genicot[3] in favour of the view that the obligation of restitution for uncertain debts is only from ecclesiastical law. But we question this interpretation of the Saint's statements. In all this matter it seems to us that a distinction must be made between the obligation of the possessor in bad faith to make some form of restitution —to restore the balance which he has disturbed by his crime— and the precise manner of making this restitution or restoration. In other words, it is one thing to say that restitution must somehow be made : it is another to say that restitution must be made to the poor. Salsmans has something like this distinction in mind when he expresses preference for the phrase ' obligatio se spoliandi ' rather than ' obligatio dandi pauperibus.'[4] *Ex hypothesi,* that is since the real owner is unknown, the balance upset by the possessor's injustice cannot perfectly be restored. But is should be restored as far as is possible. To quote one of St. Alphonsus' sources:[5] 'Debet

[1] Loc. cit.
[2] *Inslit. Th. Mor.,* i, n. 552.
[2] Loc. cit.
[4] Cf. Aertnys-Damen, *Th. Mor.,* i., n. 796 : ' Bona incerta, quorum dominus ignotus est inter multos, si mala fide accepta sunt, expendenda sunt in favorem pauperum. Etenim 1° expendenda sunt ; nam bona aliena delicto acquisita retinere non licet. 2° Expendenda sunt in usus pios constat vel ex jure naturali - - - vel saltem ex universali consuetudine vim juris obtinente . . .'
[*] Cf. *Th. Mor.,* l. iii, n. 589.

tunc fieri restitutio meliori modo quo potest.' If complete and perfect restitution is not possible, then partial restitution, in so far as it is possible, should be made. Complete restitution implies a twofold act : the taking of the goods from the wrongful possessor and their restoration to the rightful owner. Both elements pertain to the natural law. If, then, it is possible to deprive the unjust possessor of his ill-gotten goods, this deprivation—this partial restitution—is demanded by the natural law, even though complete restoration of the violated order is impossible, because the true owner is unknown. That restitution be made *to the poor* may well be, is, we think, a matter of positive arrangement. We cannot see how it can be established that the poor have, *per se,* any strict rights in natural law to the goods of which the possessor in bad faith must be deprived. To establish the obligation in positive law many theologians refer to an ancient law by which usurers were bound to make restitution to the owners, their heirs or, in the absence of these, to the poor.[1] This law is extended by the writers to cover all cases of possession in bad faith when the owner is unknown. But there is no such law in the Code, and perhaps resort could better be made to an immemorial custom.[2] Moreover, the invocation of the positive law regarding usurers only serves to emphasize the distinction we have made earlier. For usurers, in the full sense, are guilty of a violation of strict justice and are bound by natural law to make restitution. The positive law determines only the manner of making the restitution.

To revert to St. Alphonsus : the suggested distinction may well be used in interpreting the much quoted relevant passages in his works. And we venture to add that the interpretation thus reached is by no means foreign to the mind of the author. In the third book of his Moral Theology where he deals, *ex professo,* with the obligations of the possessor in bad faith when the real owner is unknown, he quotes the general principle :[3]

Si vero ea (bona incerta) habeas *ex delicto* ut furto, usura etc. teneris ea restituere pauperibus vel ecclesiae vel hospitali, etc.

In order to clarify his teaching he distinguishes two ways in which the owner may be unknown *in particulari* or *in generali.* We quote :[4]

Vel dominus incertus rei est *ignotus tantum in particulari,* prout si sciretur, rem spectare ad aliquem ex tribus vel quattuor hominibus loci sed ignoretur

[1] Cf. St. Alphonsus, *Th. Mor.,* l. iii, n. 589, 2° ; Genicot, loc. cit.; Aertnys-Damen, loc. cit.

[2] Many writers hint at this.

[3] Loc. cit.

[4] Ibid.

ad quem peculiariter spectet, tunc nequit restitutio fieri pauperibus. Sed res dividenda est inter eos quos inter defraudatos existit. . . . Vel autem dominus est *ignotus in generali,* ita ut nequeat discerni inter loci habitatores ad quem vel quos res pertineat : et tunc restitutio fieri debet pauperibus ut habetur in cap. *Cum tu, de usuris,* ubi praecipitur usurariis restitutionem facere dominis vel eorum haeredibus, vel his non superstitibus, pauperibus.

In this last sentence St. Alphonsus merely invokes a positive law to decide what is to be done, that is, how the obligation of restitution is to be discharged, in particular circumstances. He does not say, as some writers suggest, that the obligation of restitution derives solely from ecclesiastical law. There is also a frequently quoted passage in the fourth book where St. Alphonsus is dealing with the question whether those who have contracted debts, and have not discharged them, may enter religion. He makes a distinction between the cases of certain and uncertain debts, and in regard to the latter writes :1

At si *incerta* sint (debita), procul dubio statim debitor religionem ingredi potest. Quia cum obligatio elargiendi debita incerta pauperibus non sit ex iustitia et iure naturali, sed ex pietate et iure ecclesiastico.

It is presupposed in this question that the candidate cannot, here and now, pay the debts, and the real point at issue is whether it is necessary to postpone entry into religion until the debts have been paid. Neither the context nor the text warrants the conclusion that St. Alphonsus held that the obligation of the possessor *malae fidei* to dispossess himself of his actually held ill-gotten goods is of merely ecclesiastical law. And lest it be thought that we have gratuitously imposed a distinction, as a kind of *deus ex machina,* upon the statements of St. Alphonsus, we would recall what he himself has written regarding the possibility of obtaining from the Holy See composition for doubtful debts. The context is that in which he deals with the obligations of the possessor in bad faith. He writes :2

Notandum quod super his debitis incertis bene potest fieri compositio per bullam Cruciatae. . . . Potest etiam haec compositio fieri per S. Poenitentiariam. . . . An autem valeat huiusmodi compositio, facta sine sufficienti causa ? Affirmant Corduba, etc. Sed negant Covarruvias . . . et alii communiter. Verius tamen distinguendum cum Lugo, et dicendum eam valere, si restitutio sit facienda ex sola lege ecclesiastica, puta, ex fructibus ecclesiasticis male perceptis ; secus, si restitutio aliunde sit debita. Ratio primi, quia Pontifex in lege propria valide dispensat, ratio secundi quia bonorum aliunde debitorum Pontifex non est absolutus dominus.

We submit that these words clearly indicate that, for St. Alphonsus, the obligation of making restitution for debts, when the owner

1 n. 591.
2 l. iii, n. 591. Cf. Aertnys-Damen, loc. cit.

is unknown *{debita incerta'),* is not solely a matter of ecclesiastical law.

To sum up this rather prolix discussion in which one statement so readily borrowed another, and in which much quotation was inevitable : it is the almost unanimous opinion of moral theologians that the possessor in bad faith is bound to make restitution of his ill-gotten gains to the extent possible even when the real owner is unknown. The contrary view proposed by Wouters is neither extrinsically nor intrinsically probable. In point of fact, Salsmans, in the reference given by ' Robertus,' does not put forward the unusual view of Wouters. Even if he did, the conclusions just given would stand. In our opinion the *obligatio possessoris malae fidei se spoliandi* is of natural law. The destination of the ill-gotten gains of which the possessor is deprived is a matter for positive determination when the owner is unknown. Custom seems to have determined that they go to the poor or to pious causes.

RESTITUTION TO THE POOR. OWNERSHIP OF RESCUED PROPERTY

I should be grateful for a brief reply to the following difficulties which have bothered me in reading the theology of justice.

(i) It is taught that, in certain circumstances when the real owner of property cannot be found, restitution should be made to the poor. Does this obligation of restitution to the poor arise from commutative justice ? If so what precisely is its basis ? How have the poor any strict right to the property in question ?

(ii) A man saves property from a burning house—property which apart from his intervention would certainly have been destroyed in the fire. Has he not some good title to retain the property thus saved ? At the least he seems to have as good a title as the poor have to receive restitution when the real owner of property cannot be found.

Ajax.

(i) It is, of course, the accepted teaching of moralists that in certain circumstances restitution for injustice should be made to the poor or to pious causes. Our correspondent does not raise the question as to when exactly this obligation arises. But it may be well to remark here that restitution to the poor is only a sort of last resort. That is to say, restitution is to be made to them, only when it is clearly not possible to restore the property to the true owner. Moralists deprecate a too facile imposition of an obligation to make restitution to the poor or pious causes.

It is the generally accepted teaching that *mala fide* possessors and likewise those guilty of unjust injury, arc bound to make restitution to the poor or, pious causes when, and only when it is not possible to reach the real owner or the person who suffered the unjust injury.[1] St. Thomas, however, would seem to impose this obligation also on the *bona fide* possessor.[2] He lays down the general principle :[3]

Si ille, cui debet fieri restitutio, sit omnino ignotus, debet homo restituere secundum quod potest, scilicet dando in eleemosynas pro salute ipsius, sive sit mortuus sive sit vivus, praemissa tamen diligenti inquisitione dc persona eius cui est restitutio facienda.

But some commentators hold that St. Thomas meant this principle to apply only to cases of *mala fide* possession or unjust injury. Others say that the principle enshrines a counsel rather than a precept.[4] In any event, moralists generally do not apply the principle as a precept to cases of *bona fide* possession. There are, in fact, some very few moralists who hold that the obligation of making restitution to the poor or to pious causes does not arise from unjust injury. In Aertnys-Damen we read :·

An et cuinam *simplex damnificator* restituere debeat, si dominus, qui damnum passus est, omnino ignotus est ? Probabiliter non videatur teneri ad restituendum pauperibus. Etenim (1) bonam alienum quod a se abdicare debeat, damnificator nullum acquisivit ; (2) num restitutio incertorum bonorum debeatur pauperibus ex jure naturae dubium est ; jus autem positivum spectat dumtaxat ad bona acquisita.

But leaving aside these few divergent opinions as to when the obligation arises and taking the case of *mala fide* possession where all admit an obligation—we have to ask, with our correspondent, what is the nature of this obligation to make restitution to the poor or pious causes ? It is generally agreed that it is an obligation of strict justice. But there is not agreement as to the exact source of this obligation. Some say it arises from the natural law, others that it is a matter of positive law.[5] It seems to us that it arises from both these sources. Basically it derives from natural law. What we might call the details are determined by positive law.

When a person unjustly holds the property of another, strict justice is violated. A disequilibrium is set up. The unjust possessor has too much : the true owner has too little. Thus

[1] Noldin, *De Praeceptis,* n. 503.
[2] Many of the older theologians take this stricter view—cf. Billuart, *De Just, et Jure,* d. 8, a. 14.
[3] *S.T., 2-2,* 65, 5 ad 2.
[4] Cf. Prümmer, *Man. Th. Mor.,* ii, n. 234.
[4] *Th. Mor.,* i, n. 798.
[5] Cf. Vermeersch, *Quaest. de Just.,* n. 167.

restitution may be said to have a twofold aspect, or rather it may be said to be divisible into stages. The first stage is that in which the unjust possessor is deprived of what he wrongfully holds; the second is that whereby the property is restored, to the true owner if possible. It is clearly a matter of natural law that the unjust possessor be deprived of the property. He has no right to it. He has sinned in taking it; he would equally sin in keeping it. To allow him to retain the illgotten property would be to put a premium on injustice, and to continue an injury not merely to the owner but to the common good.[1] For all injustice involves an injury to the common good. The natural law demands, then, that the unjust possessor must give away the property. To whom? Obviously to the true owner, if this be at all possible. But if it is not possible to restore it to the owner then it should be given to the poor, or to pious purposes. Why to the poor or to pious causes? There are several reasons. Firstly it might be presumed to be the wish of the true owner that his property, which cannot be restored to him, should be used to benefit the poor, or pious causes. If it is the wish of the owner that the property, of which he has been unjustly deprived, be used in a particular lawful way, clearly there is an obligation in commutative justice so to use it. Moreover, to help the poor, or pious causes, is to contribute to the common welfare and, therefore, restitution made to them is a means of repairing the injury inflicted on the common good by the injustice committed. This reparation is demanded by the natural law. Finally, ecclesiastical law can be invoked as pinpointing the beneficiaries of the restitution in the circumstances under discussion. Those guilty of usury or simony were bound by ecclesiastical law to restore their illgotten gains to the poor, or to pious causes. And by custom this obligation was extended to cover all cases of unjustly acquired property when the true owner could not be discovered.[2] Admittedly, none of these reasons gives any *particular* poor, or pious cause, a strict right. But they do provide a cogent argument for holding that the poor, or pious causes, in general have a title in strict justice to be helped, in reparation for the injustice, when the true owner cannot be reached. This title is the analogue, the continuation and completion, of the obligation in strict justice which rests upon the *mala fide* possessor to give away the unjustly held property.

[1] Cf. Prümmer, loc. cit.
[2] Cf. Noldin, loc. cit., note 1.

(ii) A man who rescues property which, apart from his intervention, would be destroyed, does not become the owner of the rescued property. It is true that, except there is some special contract, he is not bound in justice to intervene to save the property. He is bound in charity if he can do so without disproportionate inconvenience. But in any circumstances the goods saved remain the property of the original owner. This is simply an obvious application of the principle *res clamat ad dominum.* The rescuer is entitled to compensation for any expenses necessarily incurred in the rescue work and, in equity, he should be given a reward. But he has no claim in justice even to a reward. The fact that the property, were it not for the rescuer's intervention, would be lost to the owner does not alter the situation. So long as the property exists it must be restored to its rightful owner. Of course if the property perished accidentally, and without fault, while in the rescuer's possession he would not be bound to compensate the owner for his loss—*res, quaecasuperit,perit domino.* It is recognized, too, that no obligation of restitution arises from the consumption of property such as food or drink which would otherwise be destroyed in the fire.[1]

There is no parallel between the position of the rescuer of property from a burning house and that of the poor to whom restitution is made as described in our correspondent's first query. In the case of the rescued property the true owner exists, is known and can be reached. His title to the property excludes all others. In the case of restitution to the poor there is question of property which cannot be restored to its true owner, but of which, nevertheless, the present unjust possessor must be deprived in the interests of justice.

THE OBLIGATION OF RESTITUTION TO AN INSURANCE SOCIETY

I should be grateful for your views on a problem of justice of which I have heard directly opposite solutions in a recent discussion. If you have already dealt with the problem, the reference will be greatly appreciated. The problem is whether one who does unjust injury to the property of another—injury which is compensated for by an Insurance Society—is bound to make any restitution. I thought that there could have been little doubt regarding the answer. But it was strongly maintained at the discussion that there is no obligation whatsoever of restitution either to the person whose property was injured, or to the Insurance Society. It was pointed out that the

[1] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 321.

person injured has been already compensated, and that the injury to the Insurance Society was not theologically culpable and that, therefore, this injury is not a ground for restitution in the case.

Parochus.

The problem stated by our correspondent is a familiar one and is mentioned, in some form or other, in most of the text-books.[1] Here, then, it will suffice to refer briefly to the views of the theologians and to indicate, as requested, the solution we prefer.

The problem as posed by 'Parochus' is really a particularization of a wider and much-discussed question. The theologians ask whether one who sets out to damage the property of A (an enemy), but who, through an inculpable error, injures the property of B (a friend), is bound to restitution? There can, of course, be no obligation of restitution to A since, *ex hypothesi,* no injury was done to his property. Many moralists say that neither is there an obligation of making restitution to B since the injury done to him was entirely unintentional on the part of the agent. It was due to an inculpable error. In other words, these writers contend that the injurious act is not theologically culpable in relation to B and that, therefore, a condition required for the obligation of restitution for damnification is not verified. Some of the older theologians, like De Lugo[3] and St. Alphonsus,[4] as well as many modern writers, hold this view. We should add that it is presupposed by all writers that the agent did not foresee, even vaguely, the possibility or danger of injury, and that his error was not culpable.

Many other authors[5] maintain that the agent responsible for the injury is, in the case, bound to make restitution to B. This agent has placed, they say, a real, efficacious and theologically culpable injurious act. The fact that this act terminates in an injury to B, not to A, as intended, is beside the point. For it is not at all a necessary element of formal injury or theological guilt that the unjust agent should be aware of the identity of the person injured. We subscribe to this latter view of the general question, and to the reasons on which it is based. We think that it is the view which accords best with common sense, with equity and with justice. In our opinion, a similar solution

[1] Cf. Noldin, *De Praeceptis,* n. 463; Priimmer, *Th. Mor.,* ii, n. 99; Davis, *Moral and Pastoral Theology,* ii, p. 329.
[2] Cf. St. Alphonsus, *Th. Mor.,* l. iii, n. 629.
[3] *De Justitia et Jure,* d. xvii, nn. 77, et seq.
[4] Loc. cit.
[5] Cf. Priimmer, loc. cit.

should be given to the particular case submitted by 'Parochus.' The agent of the injury is, we hold, bound to make restitution to the Insurance Society. We may add, indeed, that, in the circumstances of the particular case, the arguments for the lenient view are considerably weakened.[1] For here, unlike the situation of the general question, the mistake is not made regarding the particular property injured, nor regarding the owner of that property, but only regarding the ultimate incidence of the loss. In other words, in the case submitted, an efficacious injury is deliberately and culpably done—what more could be required for theological guilt?—to the property of a particular person. The efficaciously injurious and culpable act—the *radix restitutionis*—in itself is in no way touched or excused by an error which concerns an accidental or extrinsic factor.

BRIBERY OF CUSTOM-HOUSE OFFICIAL AND THE OBLIGATION OF RESTITUTION

I should like to get your view on the solution to the following case given by Father Slater: 'By generously tipping the Custom-house officer at the port 'Caius' brought from the Continent (into England) a large quantity of cigars without paying duty for them.' *(Cases of Conscience,* vol. i. p. 91.)

In solving this case Father Slater exempts both the official and 'Caius' from all obligation of restitution to the State. Is this solution correct?

Pastor.

We do not agree with the solution given of this case by Father Slater. We consider further that the solution is not even tenable; that the logic of the reply is faulty, and that the reasons given are not sound. We can demonstrate our contention along several lines of approach.

Father Slater admits[2] that 'the custom-house officer sinned by taking the bribe and not doing his duty as he was bound to do by an express or at least tacit contract entered into when he accepted his office.' But it is not stated what kind of sin was committed. Surely, as a violation of an onerous bilateral contract, it was a sin against commutative justice—from which an obligation of restitution arises.

[1] Some theologians regard them as having little force in any circumstances 'Merito abhorrent quamplurimi moderni auctores ab hac sententia (mitiori) quippe quae nimis repugnet morali hominum sensui et haud parvam invidiam causaverit casuisticae theologiae.' Priimmer, loc. cit.

[2] Loc. cit. *in quaestione.*

luxta omnes officiales tributorum exactores ad restitutionem tenentur, quando fraudentibus tributa scienter et volenter favent : illi enim ex officio seu quasi-contractu id prohibere tenentur.'

And, to quote an authority who has English tax law in mind (which he regards as purely penal), Davis writes:[2] 'Those whose business is to collect taxes certainly offend against commutative justice if they deliberately neglect their duty, and they are bound to restitution, except probably in the rare cases where they occasionally neglect to collect a trifling amount. . . We could, of course, understand Slater's viewpoint if he exempted the official from restitution by reason of the trivial amount at stake.

It is also admitted by Slater that 'Caius' co-operated in the official's sin. Co-operation in a sin against commutative justice radically involves the obligation of restitution. 'Caius' would, however, be bound only secondarily, that is, in default of the principal agent. In other words, 'Caius,' who co-operates after the manner of a *consulens,* is bound *in solidum condilionate* to repair the injury to the State. (We have assumed here, not unfairly we think, that 'generously tipping' is a euphemism for bribery). In Priimmer we read[3] in reference to this and to the preceding point :

Tributorum *exactores ex officio* graviter peccant, immo ad restitutionem tenentur, si fraudatoribus scienter favent in materia gravi. Laedunt enim graviter contractum initum in susceptione sui officii, scii, contractum fideliter implendi officium susceptum. Pariter peccant graviter et ad restitutionem tenentur tamquam cooperatores iniusti illi omnes, qui corrumpunt exactores, ne debita tributa exigant.

And again Davis says[4] that 'those who bribe tax-collectors and thus evade payment of just taxes sin against strict justice, and are bound to restitution, for the bribed tax-collector sins against justice by taking pay from the State to which he is not entitled, and one who bribes him to do this shares in his sin.'

Having admitted these sins which he has not specifically identified, and the consequences of which he has ignored, Slater goes on to say[5] that 'inasmuch as the money levied in taxes does not belong in justice to the government before it is paid in, neither 'Caius' nor the custom-house official is bound to make restitution to the government for what it would have

[1] Merkelbach, *Th. Mor.,* ii, n. 630. Cf. Aertnys-Damen, *Th. Mor.,* ii, n. 833. Noldin, *De Praec.,* n. 476.
[2] *Moral and Pastoral Theology,* ii, p. 340.
[3] *Th. Mor.,* i, n. 294.
[4] Loc. cit. ; cf. Aertnys-Damen, op. cit., n. 832.
[5] Loc. cit.

obtained if the officer had done his duty.' To be fair to Slater, it is only in regard to this amount that he formally denies any obligation of restitution.[1] But here again the reasoning is faulty. For the sake of the argument at least, we admit that the State has no strict right to the taxes before they are collected. Nevertheless, the State has a strict right that unjust means be not used to prevent its collection of the taxes.[2] In his *Moral Theology* Slater has written :[3] 'If, however, I make use of unjust means such as threats, violence or calumny, and so prevent another from getting what he otherwise would have got, I commit a sin against justice and am bound to restitution to the injured party. This is true even though he had no strict right to what he would have got, for at least he had a right not to be balked of his expectations by unjust means.' When he came to solve the case under consideration Slater seems to have forgotten this principle, to have forgotten that it is a violation of strict justice to prevent another, by unjust means, from attaining something to which he has not a strict right.[4] Slater could hardly deny that the bribing of the official to violate his contract is an unjust means. So that, even admitting, as we did, the absence on the part of the State of a right to the taxes before collection, there is another strict right violated by the bribery. The violation of a strict right is a sin against commutative justice and gives rise to the obligation of restitution. In the case we are discussing, the strict right of the State is violated to the extent of the amount of duty which would have been paid if unjust means had not been used to prevent its payment. Restitution of this amount must be made to the State.

It might further be asked : has the custom-house officer any right to the bribe? In our view it can strongly be maintained that he has no just title to it. It may be alleged that there is question here of a *contractus turpis* and that, having allowed the cigars to pass duty free, that is *postfactum,* the officer is, according to the widely accepted opinion regarding the *contractus turpis,* entitled to his reward. But here, we submit, there is question of a *contractus turpis,* with a difference—an important difference.

[1] It is not quite correct to say, as "Pastor" says in his query, that 'Father Slater exempts both the official and "Gaius" from *all* obligation of restitution.' At least he does not formally do so.

[2] Cf. Noldin, loc. cit.

[3] i, p. 264.

[4] Cf. Merkelbach, op. cit., n. 291 ; Prümmer, op. cit., ii, n. 94; Aertynsn-Damen, op. cit., n. 738.

The strict right of a third party is violated.[1] If a man is under contract to guard a house against fire and accepts a bribe to allow it to be burned—is he not bound to make restitution to the injured owner? Similarly, in the case we are considering, it can be held with good reason that the official is bound to give over to the State the amount of the bribe. It may be given over as part of the restitution for the amount of duty of which the State was unjustly deprived. But even if the bribe is far in excess of this amount, we are of opinion that the official has no right to retain any part of it. This may seem strict teaching, but we cannot see that the official has any just title to the bribe.

[1] Cf. art. 'Graft and Commutative Justice' by Father F. J. Connell *American Ecclesiastical Review*, March, 1945. We find ourselves in close agreement with the author of this interesting article.

SECTION VIII

EIGHTH COMMANDMENT

THE OBLIGATION OF PROFESSIONAL SECRECY

During the recent summer holidays the question of professional secrecy was debated one evening by a mixed group of clerics, medicos and others. Some of the medical men seemed to be under the impression that moralists were wont easily to excuse doctors from their obligation of secrecy regarding their patients. Further, they blamed this easy excusation as being responsible for a light-hearted attitude towards professional secrecy and indeed for a growing disregard (they feared) for this obligation. We, the clerics, tried to rebut the suggestion that Catholic moral teaching admitted easy excusation from the obligation of professional secrecy. Consequently, any alleged attitude towards, or disregard of, this obligation could not, and should not, be laid at the door of moralists. The discussion left the general field and came down to particular cases. Some of the old ' chestnuts ' were inevitably mentioned. What was a doctor to do who knew from professional knowledge that a patient suffered from a serious contagious disease, and was about to contract marriage with an innocent and unsuspecting partner ? Or again, take the case of the signalman on the railway who is liable to sudden collapses which might easily endanger the safety of a number of travellers. How is the doctor to act who becomes aware professionally of the signalman's condition? We were not all agreed on the solution to these questions. I thought we should have been. Subsequently I looked up some of the authors and I thought I saw evidence of disagreement amongst them too. Perhaps you would kindly give us a discussion on the points I have mentioned and your views of the practical cases. I have called them ' chestnuts.' I know they are. I feel at the same time that solutions to them would have point in this context and would have interest for many of your readers.

Inquirer.

Our correspondent raises a great number of points in his query. It would be impossible to deal with all of them in any detail, within the time and space at our disposal. We can, however, recommend to any of our readers, who desires or is interested in a complete discussion of the question, a work entitled *Professional Secrecy in the Light of Moral Principles*[1] by Dr. R. E. Regan, O.S.A. We are glad to have this opportunity of mentioning Dr. Regan's work. We here can only

[1]Published (1943) by Augustinian Press, Washington, D.C.

touch broadly upon most of the points raised by ' Inquirer.' It is not true to suggest that Catholic moralists look lightly upon, or excuse easily from, the obligation of professional secrecy. They frequently recall with approval the appropriate paragraph in the *Oath of Hippocrates* : 'And whatsoever I shall see or hear in the course of my profession as well as outside my profession in my dealings with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets.' It is the teaching of the moralists[1] that the professional secret belongs to the class of entrusted secrets, which bring with them a graver obligation of observation than any merely natural or promised secret. Statements like that of Prümmer[1] can be found in almost every text book :

> Secretum commissum obligat per se sub gravi et quidem gravius quam secretum naturale et promissum.

And the reasons given for this serious obligation of the entrusted secret are that, firstly, there is always at least an implicit contract as its basis ; and that, secondly, the violation of this type of secret injures both the right of the individual whose secret is unjustly revealed and the rights of society.[3] Thus, in the unjust revelation of a professional secret, there is a sin against both commutative and legal justice. No serious moralist may look lightly upon violations of these virtues, the due observance of which lies so nearly to any ordered way of life. We may note, too, that the observance of professional secrecy is held in high esteem and is safeguarded in the provisions of Canon Law.[4]

The moralists do allow the revelation of professional secrets in certain circumstances, but only when there is a cause which is not merely grave, but so grave that it is calculated to outweigh the disadvantages which follow from the violation of the secret.[5] In other words, they do not at all admit easy excusation from the obligation in question. But, at the same time, they do not maintain that the professional secret is absolutely inviolable. (We prescind here from the question of the secret of the confessional which, though it too belongs to the *genus of* committed secrets, has an unique sacredness and inviolability.) In November, 1944, Pope Pius XII, in an address to doctors at Rome, referred to their duty ofprofessional secrecy—a duty which

[1] Cf. Noldin, *De Praeceptis,* n. 666 ; Merkelbach, *Th. Mor.,* ii, n. 852.
[2] *Th. Mor.,* ii, n. 179. Cf. Davis, *Moral and Pastoral Theology,* ii, pp. 423-4 : 'The professional secret is the most binding of all, excepting that of the confessional.'
[3] Cf. St. Thomas, S. *T.,* 2-2, q. 70, a. 1 ; Primmer, loc. cit.
[4] Cf. Canon 1755, §2, 1°.
[5] Cf. St. Alphonsus, *Th. Mor.,* l. in, n. 971.

derived from the eighth commandment. The Holy Father spoke of the possibility, in relation to this duty, of a conflict between private and public good, and of the necessity of having sound moral standards to assess the situation : ' These standards will affirm decisively, above all in the interests of the common good, the doctor's obligation to preserve the professional secret. But still they do not concede to it an absolute value, for it would not be in the interests of the common good that such a secret should help to minister to crime or fraud.' The Catholic attitude to the professional secret lies along the middle way of sincere unexaggerated respect. We can confidently say that, if doctors and others show the same respect as the moralists show for professional secrecy and only admit revelation within the limits allowed, the institution of professional secrecy is on sure and firm lines. We hasten to add that in making this hypothesis we do not in any way wish to seem to reflect upon the attitude to secrecy of the medical or other professions. And, in reply to the remark in our query, we can say that we feel sure that the attitude of doctors to their obligation of professional secrecy is not light-hearted in any pejorative sense. We know of no ground for the suggestion that there is any growing disregard for the obligation.

Moralists generally enumerate the following causes[1] which may justify, or may even demand, the manifestation of a professional secret : if the observance of secrecy involves disproportionately grave injury to the common good, to an innocent third party, to the professional man who holds the secret, or to the person whose secret is in question. Much might be written in explanation of these conditions.[2] We have advisedly used the phrase ' disproportionately grave injury,' because it must be remembered that the observance of professional secrecy is, in the normal course, a requirement for the common good.[3] It is necessary to ensure the confidence of clients. The particular cases mentioned by ' Inquirer,' which pertain to the medical secret, can be brought under the first two headings of excusing causes listed above. The majority of moralists would say that a

[1] There are other causes which obviously end the obligation of secrecy, such as the consent of the owner of the secret or the fact that the ' secret ' information is widely known, cf. Mcrkelbach, op. cit., n. 855.

[2] Cf. Regan, op. cit., pp. 95-113.

[3] Cf. Noldin, op. cit., n. 670 ; Gcnicot, *Th. Mor.,* i, n. 452 ; Merkelbach, loc. cit. : ' Non ergo suflicit quodcumque damnum vitandum - - - - sed urgens necessitas ex gravissimo damno imminenti,' Aertnys-Damen, *Th. Mor.,* i, n. 1235.

doctor who becomes professionally aware of the seriously contagious disease of a man about to marry an innocent and unsuspecting partner may and, indeed, should, as a last resort, inform the innocent party, or her parents, of the disease. 'The better theological opinion seems to be that, in such circumstances, the doctor may (and perhaps even must) warn the girl even though it involves the violation of the professional secret.'[1] This relaxation of the obligation of secrecy, and the origin of the obligation to divulge the information, are variously explained. Many writers take the line that the diseased person (the owner of the secret) becomes, in the circumstances of the case, somewhat analogically perhaps, an unjust aggressor.[2] This at least is held to be true when the owner of the secret would be the formally unjust cause, and not merely the occasion, of the injury resulting to the innocent party. All moralists are careful to insist that the conditions which govern due self-defence against unjust aggression must be verified. That is to say, the moderation of blameless defence must be observed. As we have noted, the commonly accepted solution to 'Inquirer's' first 'chestnut' is that the doctor may and should—within the limits mentioned—reveal the secret. Yet, we are not entirely happy about this solution, especially when we remember that the observance of professional secrecy is, *per se,* a requirement of the common good.[3]

In the second case recalled by our correspondent, the moralists again say, generally, that the doctor may reveal to his employers the state of health of the signalman—if he refuses to do so himself or to give up this particular employment.[4] The reason given for this solution is that the common good is endangered and that the removal of this danger by revelation outweighs the advantage to the same common good which normally accrues from the observance of professional secrecy. Again, some question might be raised regarding the solution. It could, perhaps, be argued that railway companies could and should take measures to ensure the fitness of their employees for such positions as signalmen. The danger to the common good, envisaged in this case, should not have to be averted by the

[1] Connell, *The Catholic Doctor,* p. 26; cf. Merkelbach, op. cit., n. 855, c.; Noldin, loc. cit; Prümmer, op. cit., n. 180.

[2] Cf. Regan, op. cit., pp. 104-6, pp. 143-7.

[3] Noldin, loc. cit (c.) writes: 'Sunt autem qui putent in hoc casu non licere secretum commissum revelare, quia ex revelatione damnum commune sequeretur scii, eo quod tales aegroti medicum iam non consulerent et alios inficerent et quod fiducia in medicos probos minueretur.'

[4] Regan, op. cit., p. 141.

revelation of a professional secret. We find the general guiding principle of excusation from professional secrecy stated in the following terms[1]: 'The professional person is obliged to keep the client's secret as long as the client retains the right to his secret.' We are not sure that this principle is complete, that it goes far enough. It seems to take account only of the right of the individual to his secret, the right in commutative justice. It seems to ignore, or prescind from, the further right of society, the obligation in legal justice which is also inherent in the moral notion of professional secrecy.[2] Thus we personally would be inclined to give stricter solutions of the 'chestnuts' than those usually given.[3] But, and we particularly want to make this point, the usual solutions according to which the medical secret, in the circumstances, may and should be revealed, are in no sense easy or haphazard. The moralists who give these solutions lay down very definite limitations and conditions within which their statements apply.

THE OBLIGATION OF SECRECY ARISING OUT OF CONFIDENTIAL AND ANONYMOUS LETTERS

May a layman ask for some exposition of the moral principles involved in, and for solutions to, the following cases?

(i) Festus receives a letter unjustly assailing his character, which causes him anguish. The letter is marked 'confidential. Is Festus morally bound not to retaliate by publishing it—when only by so doing may he protect himself against undisclosed enemies and widespread defamation?

(ii) John is informed by his employer that charges have been made in an unsolicited letter against his (John's) private character. John demands to be informed of the identity of the writer. The employer refuses to give the information on the grounds that he, personally, is not accepting the charges and that the writer wished to remain unknown and that the letter was marked 'confidential.' John protests that similar defamatory charges may be being made elsewhere and

[1] Regan, op. cit., p. 97, p. 143; cf. Lehmkuhl, *Th. Mor.,* i, n. 1443. St. Thomas speaks of the obligation to observe a secret—quod de se celari potest sine peccato—*Quodlib.* i, a. 15.

[2] Cf. *supra,* p. 405.

[3] Cf. Billuart, *Summa Sli. Th.,* t. vi, diss, xii, a. 2, who says that the obligation of professional secrecy may or should cease only when there is question of crimes 'ex quibus reipublicae vel particularibus immineret grave damnum *quod aliter impediri non posset.*' [Italics ours] and in Aertnys-Damen we read: 'Hinc juxta aliquos non est licitum revelare indeque practice nulla obligatio revelandi, impedimentum matrimonii vel morbum sponsae damnosum sed ex secreto *professionali* notum.

that his only protection is to be informed of the identity of the writer. Must the employer give this information to John ?—or may he ?

(iii) A similar yet materially different case occurs in newspaper life. An editor publishes, over a *nom-de-plume,* a letter in which private knowledge is used to injure the character of Caius, a public person. The editor adds weight to the letter by stating that the author is a person of standing. Caius possibly could rebut specific charges. The hurtfulness of the letter rests not on such charges, but on general statements and innuendoes such as'we in this parish know the character of Caius.' The damage to reputation caused by the letter can only be undone if the writer's identity is disclosed. Can Caius demand this disclosure ? Can the writer plead immunity on the grounds that, when volunteering the letter, he stipulated for anonymity in publication ?

Auctor Ignotus.

A detailed discussion of the diverse points raised in our correspondent's query would bring us very far afield. We should have to range deviously, through many hypotheses, from the question of copyright in letters, via the obligation of secrecy, to considerations of editorial responsibility. We shall, however, as far as may be possible, prescind from more general discussion and shall try simply to give specific answers to the particular cases proposed.

(i) A restricted ownership in letters is transferred to the recipient by the author. It is a restricted ownership, because the authors or senders normally retain certain rights regarding their letters—in particular the right that they shall not be published by the recipient without consent.

> Qui litteras etiam familiares aut de negotiis gerendis ad alium miserit, earum quidem dominium transfert ; sed retinet jus ut non vulgentur, neque tanquam res rarae aut visendae vendantur, neque causa lucri multiplicatae edantur.[1]

Moreover, the contents of a letter often constitute what may be classed as a natural secret. The marking of a letter as ' confidential' is evidence of the author's unwillingness to consent to its publication, and of his desire that the contents be treated as secret. But the right of the writer to inhibit pubbeation must not be unduly extended, or so interpreted that it conflicts with higher rights or interests and becomes a means of defamation.[1]

[1] O'Dea, *De Justitia et Jure—Notulae,* n. 503.

[2] Ibid., where these exceptions to the letter-writer's right are added : [1] Excipe, si is cui inscriptae sunt cogatur eas (litteras) divulgare, ne causam coram judice perdat, vel ut famam a scriptore laesam resarciat, vel ob aliam causam hujusmodi. Praeterea consensus scriptoris ad eas divulgandas aliquando praesumi potest.

It would obviously open the way to a very facile and safe utterance of defamation, if a slanderer could secure immunity, simply by marking his communication 'confidential.' It is a well-recognized principle, too, that the obligation of a natural secret, though *per se* a grave obligation, ceases in the face of disproportionately serious injury to the common good, to the holder of the secret or to an innocent third party. Priimmer writes

> Boni publici urgens necessitas postulat manifestationem secreti . . . Bonum proprium scientis tunc est causa iusta manifestandi secretum, quando secus sequeretur ipsius damnum grave. Quod quidem damnum ordinarie debet esse gravius illo quod sequitur pro altero ex revelatione secreti. . . . Bonum tertiae personae exigit revelationem secreti si illa secus magnum damnum iniuste pateretur.

It is, then, our view, in the circumstances as given, that Festus may retaliate by publishing the contents of the letter in which he is defamed. This publication is stated to be necessary to safeguard his reputation against widespread unfair attack. There has not been any prior undertaking or understanding that Festus will maintain secrecy, even at the risk of grave loss to himself. The marking of the letter as 'confidential' is, in the case, a purely unilateral procedure. If, perchance, the publication of the letter would involve disproportionate injury to others or to the common good, then the letter should not be published. But there is no indication, in the statement of the case, that this hypothesis might be verified.

(ii) On the principles outlined above, we think that the employer *may* reveal to John the identity of the writer of the defamatory letter—on the supposition that this revelation is a necessary means of safeguarding John from unjust defamation. But, in our opinion, the employer is *not bound* to make the revelation. John has no strict right to the information.[2] The ownership of the letter is vested in the author and in the recipient. In the circumstances, the latter is free to accede to the author's request to regard the communication and its source as confidential. Moreover, the defamatory letter is not itself the actual cause of any loss of reputation to John, since, *ex hypothesis* his employer, the recipient, does not accept the charges. It is suggested that the letter may be evidence of a wider slanderous campaign, but no proof is offered for the suggestion. In any case, the employer's obligations in this regard can be

1 771. *Mor.,* ii, n. 280.

2 He has, of course, a strict right that unjust means be not used to defame him.

discharged by refusing, as he does, to accept the charges, and by his intimation of this refusal to the author of the letter. The over-all *incommodum* which would be involved, in revealing the writer's identity to John, is sufficient to excuse the employer from any obligation in charity to make the revelation. It may be well to add here that employers arc privileged in making a defamatory communication to *bona fide* enquirers in regard to the character of a servant, provided the communication is truthful and is made without malice. Employers are not bound to give testimonial letters of character to servants leaving their employment. But if such letters are given, they must be truthful.[1]

(iii) It is very difficult to assess accurately the obligations of newspaper editors regarding their comments or publications on public men. On the one hand, editors are clearly entitled, in the interests of the common good, to publish criticisms of a public person in his public capacity. Morally and legally, the public conduct of a public man is freely open to all fair discussion—just as, say, the public performance of an artist may be fairly criticized. The difficulty in regard to public men is to decide when, or where, their public life ends and the shelter of their private life begins. There will always be difficult borderline cases. Public knowledge is not necessarily a deciding factor. The affiliation of a public man to a secret society might well be a matter for publication in the interests of the common good—for instance, affiliation to an anarchist society. On the other hand, it is obvious that calumnious statements about the public life of a public man are morally unjustifiable. They arc untruthful, uncharitable and unjust. As has been indicated, a public man is justifiably liable only to fair criticism, not to mendacious attack. It is very regrettable that this principle is so often forgotten in certain spheres of public life, and that wild and whirling charges are freely and carelessly made. It is immoral to publish defamatory statements regarding the purely private life of a public man—that is, statements concerning matters which have, and can have, no relevance to the common good. A newspaper editor should not publish, over a *nom-de-plume* or otherwise, letters which contain such calumnious or defamatory statements. By mere publication, he shares, with the writer of the letter, responsibility for the injustice, or uncharity, committed. The insertion of an editorial commendatory note to enhance the defamatory effect of the letter

[1] Cf. Davis, *Moral and Pastoral Theology,* ii, p. 393.

means additional guilt for the editor—guilt corresponding to the wider possibility of defamation.

Our correspondent outlines a case in which the loss of reputation results from generic statements and innuendoes made in an anonymous letter—statements which arc more difficult to rebut than specific allegations. We appreciate the point, but we are not sure that the only way of undoing the damage is by the disclosure of the name of the letter-writer. If the letter is libellous, Caius may, indeed, ask for that disclosure. But the editor need not accede to his request. In fact, in our view, he may not normally so accede, if the letter has been sent to him for publication on the understanding that the writer's identity will be concealed. The editor assumes an over-riding, though not exclusive, responsibility. In civil law—we speak as those less wise—if the proprietor or editor of a newspaper admit publication, a plaintiff is not entitled to question the defendant as to the identity of the author of the alleged libel—unless this identity is a fact material to an issue in the case. If this identity is declared, by competent authority, to be material to the issue, then it must be disclosed—*post sententiam,* so to speak. In reply to our correspondent's final question—whether the writer of the letter can plead immunity, if he has stipulated for anonymity—we would say, then, that he may often plead and obtain legal immunity. But he remains, we repeat, morally responsible, with the editor, for any unfair defamatory utterance contained in the letter. If actual damage has been culpably done to Caius's reputation, the writer of the letter would be bound, jointly with the editor and proprietor, to make all possible reparation. The disclosure of the writer's identity will not, apart from very extraordinary circumstances, be necessary for such reparation. A first obvious step might be the publication, over the same *nom-de-plume,* of a formal letter of retraction to which the editor should give commendation, similar to that granted to the defamatory communication.

THE OBLIGATION OF A DOCTOR TO CORRECT THE FALSE CONSCIENCE OF HIS PATIENT. THE OBLIGATION OF DENUNCIATION OF OCCULT DELINQUENT WHO IS LEADING OTHERS TO SIN

(1) An interesting case was put before me recently and I would welcome your solution as a help for future occasions. A medical doctor, a friend of mine, had occasion to ask a patient certain questions

about her marriage obligations and put a query in the form 'whether there was anything wrong.' The reply was so expressed as to make it absolutely certain that the person thought that the only form of birth control which was sinful is that with instruments. The doctor would like to know whether he has a grave obligation to enlighten such a patient, since, in fact, she was acting according to her false ideas.

(2) A teacher, who had some reason to suspect that a pupil was being led into sinful actions *contra sextum* by an older brother, was giving an instruction to a class, and admonished the children to report to their parents any occasion or incident in which anybody, including brothers or sisters, would lead them into sinful ways. The teacher afterwards doubted the prudence of his admonition and asked a priest who finds it difficult to make up his mind on the matter. Would you kindly give the correct doctrine on the point?

I should also be grateful to know what should a confessor do in case the young 'victim' in such circumstances should come to him. It has been said that his primary obligation is to safeguard the *sigillum*, even if the remedy of denunciation would be certainly successful. A brother priest holds that in such cases the older member, albeit a culprit, retains his right to his reputation, as his offence is occult and that it would be wrong to enjoin denunciation.

Senex.

It seems to us that, in his first query, our correspondent is principally concerned with the obligation of the medical doctor to give moral enlightenment to his patient. But, in the circumstances of the case, the possibility of a more pressing obligation to give medical enlightenment might well be considered also. With regard to the first point, the obligation to give instruction on the moral issue: there is simply question, in the case submitted, of a woman who is practising a sinful method of birth control. We have no indication as to what this method is, beyond the fact that instruments are not used. Possibly there is withdrawal or douching in some form. Nor have we any idea as to the part played, or the attitude adopted, by the woman's husband. We do not know if there is scandal. So we must prescind from these unknown factors. The woman is in good faith: her manner of acting is not subjectively sinful. Thus the query comes to this: is the medical doctor gravely bound to correct the woman's false conscience? In our view that question must be answered in the negative. Any such obligation on the part of the doctor could arise only from charity on lines closely analogous to, though less clear than, the duty of giving fraternal correction. An individual is gravely bound to administer a *correptio fraterna* only when the delinquent

is in grave spiritual need, when the correction is necessary, in the sense that there is no one else who might more fittingly deal with the situation, when the correction is reasonably calculated to do good, and can be given without great inconvenience. The theologians remind us that all these conditions are rarely verified —hence rarely is there a grave obligation to give a *correptio fraterna.* As Priimmer has it[1]:

Non tencor sub gravi corrigere proximum nisi constet de cius gravi necessitate spirituali, ex qua aliter quam per meam correptionem liberari praevidetur; correptio a me fieri potest sine magno meo incommodo. . . . Cum hae conditiones raro simul concurrant raro quoque adest pro homine *privato* gravis obligatio faciendi correptionem fraternam.

In the matter of giving spiritual advice, a doctor must be regarded as a private individual. The obligation of such a one to correct a false conscience is clearly even less pressing than that of giving fraternal correction. Noldin lays down a general principle which is widely accepted:

Stricta obligatio monendi proximum in homine privato non existit, sive contra legem naturae sive contra legem positivam (materialiter) peccat, quia praeceptum monitionis seu correptionis solum est de peccato formali, quod ei damnum affert.[2]

The doctor in the case *may* inform his patient that the method of birth control used by her is immoral—if he has good reason to hope that this information will lead her to correct the error of her ways. But, in our view, he is not gravely bound to volunteer the information; nor should he wantonly shatter his patient's good faith. On the other hand, a doctor may not directly or indirectly, counsel or approve contraceptive practices.

Si les pratiques anticoncceptionelles sont toujours contraires à la loi morale et funestes dans leur conséquences individuelles, familiales et sociales, il est hors de doute que le médicin ne peut jamais les conseiller ou les approuver, fût-ce indirectement.[3]

It may be well to add here that a confessor holds a very different position from that of a doctor, when there is question of correcting a false conscience regarding birth-control practices. The direction of *Casti Connubii* is very clear on this matter. 'Should any confessor or pastor of souls . . . lead into error the faithful committed to his care, or at least by his approval,

1 *Manuale Th. Mor.,* i, n. 601. Cf. Jorio, *Th. Mor.* (ed. 1938), i, n. 303.

2 *De Praeceptis* n. 98. St. Alphonsus *{Th. Mor.,* l. 2, n. 36), holds the view that a false conscience regarding violations of the natural law should always be enlightened. But the view of Noldin is that commonly held to-day; cf. Jorio, op. cit., i, n. 304; Priimmer, op. cit., i, n. 603.

3 Payen, *Déontologie Medicale,* n. 321.

or by a misleading silence, confirm them in holding such (contraceptive) doctrines, then let him know that he will have to render to God, the sovereign Judge, a strict account of this betrayal of his trust.'[1]

In the medical sphere a doctor has special relations towards his patient. There is between them an implied contract—from which obligations in justice arise. While, in the hierarchy of the virtues, charity ranks as the greatest, it is nevertheless true that obligations of justice press more heavily than those of charity. A medical doctor is strictly bound in justice to give, to the best of his ability, accurate advice on what concerns their bodily and mental health to patients who consult him.[2]* We are told on good authority that the continued practice by a woman of sinful birth-control methods—even though instruments are not used—may easily lead to grave physical and psychical disorders.

Les pratiques onanistes ont le plus pernicieux retentissement sur le *système génital* de la femme : nul ne cherche à le contester. Les excitations répétées de l'utérus, sans conclusion naturelle, amènent les troubles les plus graves de cet organe (métrites, déviations, tumeurs, cancers, etc.) D'autre part, la vie purement sensuelle, privée de repos et de détente, ébraule à la longue le *système nerveux* de la femme, et la conduit aux troubles variés de l'hystérie, et quelquefois aux désastres de la folie.[1]

Now if, in any individual case, from the facts discovered in examination or revealed by the patient, the doctor is of the opinion that the birth-control method used in good faith is seriously injurious to the health of the woman, he is gravely bound to inform her of this danger. There is question here of an obligation in justice.

(2) Our correspondent's second query ranges round the obligation of denouncing a delinquent who occultly leads others into sin—an obligation which is closely related to that of giving fraternal correction. According to the Gospel teaching, the correction of an occultly erring brother should first be made secretly. 'If thy brother shall offend against thee, go and rebuke him between thee and him alone.'[4] If this does not suffice, the correction is to be made in the presence of witnesses. Denunciation to authority is, as it were, a last resort : '*If* he will not hear them tell the Church.' These, of course, are only

[1] C.T.S. (London), 1943, English translation, n. 57.
[2] Cf. Hürth, *De Statibus,* nn. 155 et seq.
•Surbled, *La Morale,* i. pp. 191-2; cf. Merkelbach, *Quaestiones de Castitate et Luxuria,* p. 117 ; Bonnar, *The Catholic Doctor,* pp. 63-4, quotes similar medical evidence.
[4] Matt, xviii, 15-17.

broad principles for the normal ease. There arc many exceptions'—as, for instance, when a person foregoes the right to be corrected privately, which is true of the members of some religious communities. But it follows, we think, from the broad Gospel principles that it is neither prudent nor, indeed, correct, to suggest to a class of children that they should forthwith denounce to their parents anyone who is guilty of leading them into sin. That is not to say that children are never to denounce certain delinquents. It would, however, be difficult to explain to a class of children when precisely they may, and should, make this denunciation. So we suggest that the most prudent procedure for a teacher is simply to say that children who are being led into sin by others should mention this fact to their confessor in the secret of confession.

This brings us right up against our correspondent's further problem. What is a confessor to do when a young penitent mentions that he is being corrupted by some one—say an elder member of his family? The confessor must, we think, consider two questions. Firstly, is the victim bound to denounce the person who is guilty of the corruption? In other words, is there an obligation of denunciation? Secondly, in the hypothesis that the obligation is present, should it be imposed on this penitent under pain of refusal of absolution? In regard to the first question: obviously there can be no obligation of denunciation unless it is abundantly clear that the delinquent is really guilty of serious corruption. There is a wide field for self-deception, and even malice, here. Denunciation is a serious matter. It involves loss of reputation. Be it noted, however, in reply to an objection raised in the final sentence of the query, that this loss of reputation may, in certain circumstances, justly be subordinated to a higher interest.[1] Denunciation is difficult for the person making it; it is distasteful; it may involve confession of one's own guilt. It may even be dangerous, may be construed as libellous. So we can state the general principle that there is an obligation of denouncing a real delinquency, if denunciation is the sole, necessary and efficacious means of avoiding a greater evil, and if this denunciation can be made without disproportionate inconvenience—disproportionate, that is, to the evil in issue. In practice the evil to be avoided will be injury to the common good or to an innocent third party. In Canon Law, cases are mentioned in which denunciation is

[1] Cf. Davis, *Moral and Pastoral Theology*, i. pp. 328-329.

[2] Cf. St. Thomas, *Quodl.* xi, a. 12. 'Cum praeponderet bonum commune in ordine caritatis . . . bono proximi, sive sit famae. . . .'

obligatory,[1] by reason of danger to the common good. There is an obligation to denounce a confessor who has been guilty of the crime of solicitation.[2] Again, the Canon Law states that the faithful are bound by the natural law to denounce a crime from which danger to faith or to religion or other imminent public evil might result.[3] To take an example which is very near to the subject of our correspondent's query: theologians teach that there is a grave obligation to denounce those who are guilty of occultly corrupting youth. Noldin poses the question:[4] 'Num alumni sub gravi teneantur denuntiare occultos corruptores?' His reply follows the generally accepted lines.[5]

Si damnum commune timetur ut complurium corruptio vel domus infamia, denuntiare tenetur, etiam cum gravi incommodo: grave enim incommodum non excusat quando de damno communi agitur. Quodsi non timetur nisi unius vel alterius damnum non tenetur cum gravi incommodo, quia caritas non obligat cum gravi incommodo ubi de damno privato agitur.

Coming to the second question which the confessor must consider: supposing there seems to be an obligation to denounce, should this obligation be imposed under threat of the refusal of absolution? Prilmmer suggests, somewhat bluntly, that it should.

Si quis autem sciens tale periculum (in collegio iuvenum unus alios ad peccatum grave pertrahit) existere in aliqua communitate recusaret denuntiare corruptorem, illi absolutio sacramentalis esset deneganda.·

We are of opinion that the confessor should strongly recommend denunciation rather than demand an undertaking to make it as a precondition for absolution. We have many reasons for this opinion. A confessor can never be sure that denunciation is a necessary means of correcting the evil. There will be other means. Nor can a confessor be certain that denunciation will be effective. And it should never be forgotten that, as we hinted earlier, denunciation may subjectively be almost insuperably difficult and distasteful. To solve this latter difficulty

[1] The obligation of the faithful to reveal impediments to the reception of Holy Orders (can. 999) and Matrimony (can. 1027) is somewhat analogous to the duty of denunciation.

[2] Canon 904, '. . . debet poenitens sacerdotem, reum delicti sollicitationis in confessione, intra mensem denuntiare loci Ordinario vel S.C.S. Officii; et confessarius debet, graviter onerata eius conscientia, de hoc onere poenitentem monere.'

[3] Canon 1935, § 2. 'Imo obligatio denuntiationis urget - - - ex ipsa naturali lege ob fidei vel religionis periculum vel aliud imminens publicum malum.'

[4] *De Praeceptis,* n. 97.

[5] *Manuale Th. Mor.* i, n. 602.

some writers suggest that the victim might make denunciation indirectly, through the confessor. We disagree with that suggestion. The procedure suggested might raise suspicion in the minds of some of the faithful regarding the observance of the seal. And the raising of such suspicion must be carefully avoided. We do not see, however, in what way a confessor's exhortation to a penitent to make denunciation would imperil the seal. Thus we do not quite understand the point of our correspondent's reference to the duty of safeguarding the seal—unless he has in mind indirect denunciation through the confessor, a procedure which we also have described as dangerous.

ADVOCATE'S CO-OPERATION IN FALSE TESTIMONY

I will be grateful if you can help me to come to a decision in the following matter.

Alexander, a conscientious advocate, is called on to defend a person accused of robbery. In private conference, the defendant admits his guilt to the advocate. On being asked what is his defence, he says that he intends producing several witnesses who will swear a false *alibi* on his behalf. Is the advocate justified in undertaking the defence? Note that the advocate makes no suggestion as to the method of defence, and does not attempt to elaborate his client's suggestion but merely accepts and propounds it. He is now troubled in conscience about co-operation in perjury, and seeks guidance for the future.

Thanking you sincerely.

Amicus Advocati.

The theologians distinguish between criminal and civil cases when they come to discuss and outline the duties of advocates in relation to their clients and in conducting their defence.[1] This distinction is made in the light of the general attitude of law towards the defendant in a criminal trial. He is presumed innocent until his guilt has been proved. Consequently, an advocate may, even though he knows his client to be guilty, undertake the defence of the accused in a criminal trial. As St. Alphonsus has it[2]:

> In causa criminali potest (advocatus) reum etiam sontem defendere, ut mortem aliaqjye poenam evadat; quia reus non tenetur ad poenam nisi convictus: ergo potest per se vel alium eam avertere donec convincatur.

The advocate may use all lawful means to rebut condemnatory evidence, to gain the sympathy of the judge or jury and thus win

[1] Cf. Aertnys-Damen, *Th. Mor.,* i, n. 1223; Noldin, *De Praeceptis,* n. 737; Prümmer, *Th. Mor.,* ii, n. 162.

[2] *Th. Mor.,* l. iv, n. 220.

a verdict for his (guilty or non-guilty) client. But he may not use nor may he knowingly co-opcrate in the use of, unlawful means of defence.[1] St. Thomas does not formally make the distinction we have mentioned between civil and criminal cases when he discusses the question : ' Utrum advocatus peccet, si iniustam causam defendat ? ' Yet his reply to this question is in point here. St. Thomas writes[2] :

Respondeo dicendum quod illicitum est alicui cooperari ad malum faciendum, sive consulendo, sive adiuvando sive qualitercumque consentiendo : quia consilians et coadiuvans quodammodo est faciens . . . manifestum est autem, quod advocatus auxilium et consilium praestat ei, cuius causae patrocinatur ; unde si scienter iniustam causam defendit, absque dubio graviter peccat.

In the case submitted for our consideration, prescinding for a moment from the means suggested, Alexander might lawfully undertake the defence of his client who is guilty of, and whom he knows to be guilty of, robbery. But, in conducting the defence, he may use only just means.[3] The means suggested by his client are obviously immoral, implying perjury and the direct scandal of the other witnesses. If, then, the client insists upon this manner of defence, Alexander may not undertake the case. We have noted that, in the circumstances as given, Alexander does not suggest, or elaborate, the unlawful manner of defence. But his acceptance and proposal of it—as he must accept and propose it if he conducts the defence—amount to tacit approval of the immoral procedure and immediate co-operation in it, which are unjustifiable. In conclusion we may mention that we have been assured recently, in a different context, that the common practice of barristers in this country is to withdraw from cases (civil or criminal) in which they learn that perjured evidence will be put forward by their clients.

[1] Many theologians remark that defending counsel may not adopt, as a line of defence, the theory that crime is a form of disease and that all criminals are irresponsible in the sense that they are ' determined ' to their crimes by uncontrollable inner forces or impulses. Cf. Wouters, *Th. Mor.,* i, n. 1141. The remark deserves notice nowadays.

[2] *S. T.,* 2, 2, q. 71, a. 3, c.

[3] Lehmkuhl sums up the teaching thus : ' In causa criminali reum etiam certo noxium defendendum suscipere potest, si modo abstineat a mendaciis mediisve iniustis, quum liceat saltem ad misericordiam iudicem inflectere.' *Th. Mor.,* i, n. 822.

THE USE OF MENTAL RESTRICTIONS BY DEFENDANT IN A CRIMINAL TRIAL

In recent years one accused of a criminal offence is, I learn, permitted to give evidence on his own behalf. Even if conscious of his guilt may he truthfully swear that he is not guilty ? And this although he has just sworn he will tell the truth, the whole truth and nothing but the truth. The allegation that he may lawfully do so seems to be reinforced by the fact that if one uses the ordinary words used to constitute an oath, he is not guilty of perjury if he makes it clear that he does not intend to take an oath. Also it is argued that his reply—'not guilty'—has a very definite meaning, namely, that he does not admit guilt until the State proves it. Besides it is pointed out that one is not guilty of perjury if, in taking out probate of a will, of which one is executor, one were to swear that the assets are of somewhat less value than they are in reality. A reply would be greatly appreciated by yours faithfully.

Dubius.

Our correspondent's opening sentence suggests that a change has been made recently in the law governing the competence of the defendant in a criminal trial to act as witness. It is true that there has been a change in English law, but the change is not very recent. Briefly, this is what has happened. Up to 1898 in England, and wherever English law ran, the defendant in a criminal charge was not, at common law, a competent witness either for the prosecution or for the defence.[1] He could make a non-sworn statement from the dock. In 1898 the Criminal Evidence Act was passed, and the situation was altered. According to that Act every defendant, at every stage of the criminal proceedings, is a competent witness for his own defence, or for the defence of any person tried along with him.[1] But he cannot be called as a witness, either on his own behalf, or on behalf of a co-defendant, except on his own application. In other words, the defendant in a criminal trial is now a competent but a non-compellable witness for the defence. The defendant may elect not to give evidence, in which case he may make a statement from the dock as he could at common law. That is the present position under English law. Similar provisions for this country are contained in the Criminal Justice (Evidence) Act passed by the Oireachtas in 1924. The first section of that Act is interesting, and as it is, for the most part, relevant here, we think it well, despite its length, to quote it

[1] Cf. Halsbury, *The Laws of England,* ix, n. 771 ; xiü, n. 777.
[2] Halsbury, op. cit., ix, n. 773.

almost in full. It would, in any case, be necessary to refer to many parts of it in order to give an adequate answer to our correspondent's query. The Act reads

" Section I.—Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person, provided as follows :

' (a) A person so charged shall not be called as a witness in pursuance of this Act except upon his own application ;

' (A) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution.'

We omit sections (c) and (rf) as entirely irrelevant to our purposes here.

' A person charged and being a witness in pursuance of this Act, may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged.

'(/) person charged and called as a witness in pursuance of this Act shall not be asked, or if asked shall not be required to answer, any question tending to show that he has committed or been convicted of, or been charged with any offence other than that wherewith he is now charged, or is of bad character unless : (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged ; or (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution ; or (iii) he has given evidence against any other person charged with the same offence.

' *(g)* Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the Court, give his evidence from the witness-box or other place from which the other witnesses give their evidence.

' (A) Nothing in this Act shall affect the right of the person charged to make a statement without being sworn.'

It may be well to comment briefly on some of the more important points in this section. It is clear that the defendant has a choice as to whether or not he will give evidence for the

defence. The trial judge, it is held,[1] should pointedly direct the defendant's attention to the fact that he has this choice. If he decides not to give evidence the judge may, in his discretion, comment on this fact,[2] and the comment, as well as the fact, may well weigh heavily with the jury. The counsel for the prosecution, however, may not comment on the failure of the defendant to give evidence. If he elects to give evidence he must do so on oath (or affirmation) like all other witnesses[3] and he may be cross-examined by his own counsel and by counsel for the prosecution. The defendant may not object to a question put to him during cross-examination on the grounds that it would criminate him as to the offence of which he is charged, but normally he may not be asked, or, if asked, may refuse to answer, questions that would tend to show that he had been guilty of some other offence.

The usual procedure in a criminal trial is that the defendant is first arraigned before the Court; that is to say he is called to the bar by name and the indictment is read to him. He is then asked whether or not he is guilty of the charge.[4] Even though he is fully conscious of his guilt he may plead 'not guilty.' This plea is a technical phrase signifying that the *onus probandi* rests on the prosecution. The plea 'not guilty,' accordingly, is not a lie. It is hardly even a broad mental restriction—though one might loosely describe it as such. At this stage of the arraignment, at which the defendant enters his plea of 'not guilty,' he is not on oath. It is only when he elects to give evidence that an oath is administered to him. But there is no reason why he might not similarly enter a plea of 'not guilty,' even if he were under oath. It is the well recognized teaching of moral theologians that one may, for a sufficient cause, use a broad mental restriction and, that, for a similar cause, one may confirm this restriction on oath.[5] The reason simply is that a broad mental restriction is not a lie. It is the truth. Therefore there is no perjury in swearing to confirm it. And if we may confirm a broad mental restriction with an oath, there is an *afortiori* argument in favour of allowing a defendant in a criminal trial to plead 'not guilty' under oath because, as we have just remarked, that phrase 'not guilty,' if it may be called a mental restriction at all, is the broadest of broad mental restrictions.

1 Cf. Sandes, *Criminal Practice, Procedure and Evidence in Éire,* p. 119.
2 Sandes, op. cit., p. 120.
3 Cf. Halsbury, op. cit., ix, 774; xiii, 801.
4 Sandes, op. cit., pp. 91 et seq.
5 Cf. Priimmer, *Th. Mor.,* ii, n. 171, n. 444; Davis, *Moral and Pastoral Theology,* ii, p. 46, pp. 413-416.

When a defendant in a criminal trial elects to give evidence, and takes an oath to tell the truth, the whole truth and nothing but the truth, he does not thereby forego his right to use broad mental restrictions—particularly in regard to his own guilt. In fact in some cases he *may* not forego that right—as, for instance, in the case of a priest defendant who is questioned on sacramental knowledge. Surely there is no doubt that this defendant may, nay, must use, under oath, broad mental restrictions to guard the sacramental seal. Priimmer says of such a one[1] : ' Potest, immo et debet iurare cum restrictione mentali.' Let us repeat that a broad mental restriction is not a lie. But it must be remembered, as we have mentioned earlier, that, in order that one may lawfully use a broad mental restriction, there must be a reasonable cause to compensate for any deception which may follow. And it might reasonably be held that a somewhat greater cause would be required to justify the confirmation on oath of a broad mental restriction.[1] But it seems clear to us that the defendant in a criminal trial may have such a cause, in fact has such a cause, whenever the non-use of an available broad mental restriction would tend to criminate him as to the offence charged. That is to say, in these circumstances, he may use a broad mental restriction. He cannot in civil law, as we have seen, object to a question, or refuse to answer it, on the grounds that the question or its answer tends to criminate him in regard to the offence charged. Civil law will not uphold such an objection.[3] He must then either confess or use a broad mental restriction. And he is not bound to confess his crime.[4] As Noldin writes[5] :

Reus crimen a sc commissum fateri non tenetur ; quare a mendaciis quidem abstinere debet, ad interrogationes autem iudicis respondere potest cum restrictione mentali, immo ipsa negatio criminis in hoc casu non est mendacium, sed restrictio late mentalis, siquidem negat se commisisse crimen quod fateri non teneatur.

It cannot be held that the counsel for the prosecution or the udge have a right to the defendant's confession. Canon 1743 confirms the view we have expressed.[6] It says :

Iudici legitime interroganti partes respondere tenetur et fateri veritatem nisi agatur de delicto ab ipsis commisso.

[1] Op. cit., ii, n. 444.
[2] Cf. Aertnys-Damen, *Th. Mor.,* i, n. 466 : ' Causa tamen gravior requiritur quam si adhibetur restrictio sine juramento.'
[3] Cf. *supra.*
[4] Cf. Aertnys-Damen, op. at., n. 1ZZ7.
[5] *De Praeceptis,* n. 733.
[6] It is worthy of note that in ecclesiastical criminal trials the judge cannot administer to the accused an oath that he will tell the truth—cf. c. 1744.

To avoid self-crimination is, of itself, a sufficient cause for the use by the defendant, even when he is under oath, of *broad* mental restrictions. It may be objected that the defendant has only himself to blame when he is faced with the possibility of having to confess his crime or criminate himself in reply to a question. For he might have abstained from giving evidence. He freely elected to do so, and by this option opened up the possibility of his cross-examination. It is, indeed, true that legally he was free to give or not to give evidence. But it has been pointed out that the judge may comment adversely on the fact that he chooses not to give evidence, and that this comment, in addition to the fact itself, may greatly prejudice his case in the minds of the jury. Thus his opting to give evidence is not, in fact, entirely voluntary. Moreover, we might remark in passing, that this objection, even if it were valid, would not argue a defect in the conditions of truth or justice in the oath. At most the defect would relate to the condition of judgment, would imply that the oath is unnecessary. This condition of judgment binds *sub veniali.*[1] And we have shown that the oath was not entirely unnecessary.

We have italicized the word *broad* above because, needless to say, any other kind of mental restriction would not be lawful in any circumstances—whether confirmed on oath or not. A broad mental restriction is an expression of the truth ; a purely mental restriction is nothing more or less than a lie.[2] It is our view, then, that the defendant in a criminal trial may, even when under oath, use broad mental restrictions to avoid being forced to incriminate himself and thus equivalently to confess his crime. The theory seems clear enough. In practice, however, it will often be very difficult, if not impossible, for the defendant to find suitable broad mental restrictions which can withstand the attacks of a prosecuting counsel. And there is a further practical danger. So far as we are aware, the civil courts do not admit or recognize the use of broad mental restrictions and the defendant may, in employing them under oath, leave himself liable to a charge of perjury.

In the course of his letter ' Dubius ' remarks that one may, without committing perjury, use an oath formula provided it is made quite clear that there is no intention of swearing. And this is true.[3] But we cannot see its relevancy to the main

[1] Cf. Merkelbach, *Th. Mor.*, ii, n. 751 ; Priimmer, op. cit., ii, n. 444.
[2] Cf. Priimmer, op. cit., ii, n. 172.
[3] There is perjury only when the condition of truth is absent in an oath. And perjury is a grave sin *ex toto genere suo.*—Cf. Aertnys-Damen, op. cit., i, n. 465.

question and to the view expressed above. Consequently we cannot admit that it reinforces that view—which is concerned with a valid oath. The mere utterance of an oath formula without the intention of swearing, is not a valid oath. This absence of intention may be merely internal, or it may be clearly externated. In neither case is there a valid oath. When a person withholds internally his intention of swearing while uttering externally an apt oath formula he is said to swear fictitiously. Such fictitious swearing is sinful. It dishonours God and deceives men. Pope Innocent XI condemned the proposition[1] 'Cum causa iusta licitum est iurare sine animo iurandi, sive res sit levis sive gravis.' Fictitious swearing is gravely sinful in circumstances in which one is required by legitimate authority to take an oath. If the fictitious oath is promissory the person who took it is liable for consequential damage.[2] Moreover, in the external forum, one who uses an oath formula when circumstances demand an oath will be presumed to have had the intention of swearing, and to have taken a valid oath, and consequently, if discovered in falsehood, will be held guilty of perjury. If a person indicates clearly that he has no intention of swearing, then the use of an oath formula is usually a vain usurpation of the divine name.[3] Such use of an oath formula would be lawful for a sufficient cause. But we cannot conceive a court's allowing a witness to act in this manner, or accepting his evidence if he did so act,[4] nor can we understand what purpose would be served by a witness opting to give evidence in these circumstances.

Finally, our correspondent invokes as an argument for his view (which is also our view), the teaching that an executor is free to understate the value of the assets of an estate for the purposes of death duty, and to swear to this under-statement. We do not agree that an executor normally has this degree of freedom in dealing with the assets of a deceased person. It might be held that an executor is entitled, in the circumstances, to value the deceased's property at its normal market value—

[1] Denz., 1175.

[2] Davis, op. cit., ii, p. 47.

[3] Some theologians wrongly call this a fictitious oath. It is not a valid oath nor has it even the 'fiction' or the species of a valid oath. Davis rightly notes that 'A fictitious oath is not to be confounded with a form of words which naturally, indeed, are a true expression of an oath, but which we openly declare not to be so for us, but to be words to which we attribute no meaning'—op. cit., ii, p. 46 (note).

[4] Cf. Halsbury, op at., xui, n. 801. Subject to a few exceptions 'no evidence is receivable in any kind of legal proceedings except such as is given upon oath or affirmation.'

which may, *per accidens,* be less than some extraordinary value it has here and now. But beyond this, or rather below this, we would not allow the executor to go in his statement of the value of assets—unless, perhaps, there is a generally recognized custom to the contrary. If such custom exists, many writers permit a corresponding understatement of the value of assets. Merkelbach, for instance writes,[1]

[1] Si ex consuetudine *generali* soleat partialiter defraudari, declaratio restrictiva quae hanc partem celet, forsan etiam tunc haberi posset ut non mendax (nisi tamen falsis quis utatur syngraphis) quia id sufficienter indicatur a circumstantiis, et quia potestas civilis iuste exigere nequit ut quis proportionalitcr solvat plus quam in iisdem adiunctis fieri solet.

SECTION IX

PRECEPTS OF THE CHURCH

OBLIGATION OF INFANTS TO OBSERVE ECCLESIASTICAL LAWS

Do the ecclesiastical laws of attendance at Sunday Mass and of abstinence bind children under the age of seven who have received their first Holy Communion ?

Dunn ans.

In so far as the obligation of attendance at Sunday Mass is a matter of merely ecclesiastical law there is no doubt that children who have not reached the age of seven are not bound by it. This is evident from canon 12 which requires for subjection to merely ecclesiastical laws that one be baptized, have the use of reason and have completed one's seventh year of age, unless the contrary' be stated in the law. The contrary is not stated in the law in question. It is well recognized, however, that the precept of Sunday Mass, while it derives immediately from ecclesiastical law, has a firm basis in divine law.[1] This divine law binds all who have the use of reason to render public and social worship to God. But the obligation of sanctifying every Sunday is a matter of merely ecclesiastical law. Thus it can be said that children who have reached the use of reason, even though they are not yet seven years of age, are bound to render this public worship to God by attendance at Mass at least *aliquoties in anno,* but they are not obliged to render this worship in accordance with the details of merely ecclesiastical law. That is to say, they are not bound to go to Mass every Sunday. But, of course, it is highly to be recommended that these children, especially after the reception of their first Holy Communion, should be sent, or brought, regularly to Mass on Sundays and Holydays so that they may from the earliest years be formed in the habit of such observance. In Regatillo-Zalba we read :[3]

Quatenus admittatur existera legem divinam obligantem ad missam audiendam aliquoties in anno etiam pueri infra septennes qui habituali usu rationis potiantur . . . debebunt audire Missam aliquoties in anno sed non praecise diebus dominicis. . . . Infra septennes qui usum rationis iam habent et ad sacram communionem admissi sunt, nondum ad missam

[1] Cf. Prümmer, *Man. Th. Mor.,* ii, nn. 465-466. *Th. Mor. Summa,* ii, n. 162.

diebus festis audiendam obligantur; praestat tamen ut parentes Christiani eos sccum adducant ad templum ubi primum reverentiam externam bene observant ut tempestive initientur in pietate.

The ecclesiastical law of abstinence docs not bind children who have not completed their seventh year, even though they may have attained the use of reason. This law is purely ecclesiastical. But as we have remarked in regard to the law of attendance at Mass on Sundays it is well that Catholic children should learn of, and practise observance of, this law from their earliest years of reason.

OBLIGATION OF *PEREGRINI* IN IRELAND TO OBSERVE ST. PATRICK'S DAY

Are English Catholics who are temporarily resident in Ireland bound to attend Mass on St. Patrick's Day?

Derriensis.

This brief and apparently simple query raises a few interesting points and it is not possible to give immediately a categoric answer. It is necessary to make a number of distinctions.

St. Patrick's Day is not listed among the feasts of precept for the universal Church.[1] But in virtue of an Apostolic induit, granted to the Irish bishops, it is a feast of precept in Ireland.[2] The law demanding the observance of St. Patrick's Day as a feast of precept is therefore a particular local law. Nevertheless, temporary residents in Ireland would certainly be bound to observe it in three contingencies. Firstly, they would be bound, in virtue of the natural law, if non-observance would give rise to scandal in the concrete circumstances. Secondly, the temporary residents would be bound by this local law if they had acquired a quasi-domicile in Ireland. Thirdly, if the temporary residents are *vagi* they are also bound. *Vagi* are bound by the general and particular laws which are in force in the territory in which they are.[3] But the temporary English residents may be, most probably will be, *peregrini* who have their domicile and/or quasi-domicile outside Ireland. Such *peregrini* are bound only by those Irish local ecclesiastical laws which concern public order, or which determine the solemnities of acts. The latter point which has reference to solemnities of acts is not relevant

[1] Canon 1247.
[2] Maynooth Statutes (1927), n. 331; Cf. Appendix, n. 112.
[3] Canon 14, § 3, 'Vagi obligantur legibus tam generalibus tam particularibus quae vigent in loco in quo versantur.'

to this discussion. But we have to ask whether the law which constitutes St. Patrick's Day a feast of precept is a law which concerns public order. If it is, *peregrini* are bound by it. If it is not, *per se,* they are not so bound. The authors[1] generally do not regard a particular law which establishes a feast of precept as being amongst those laws *quae ordini publico consulunt.* Yet there is no final or absolute agreement as to the precise denotation of the phrase *leges quae ordini publico consulunt.*[2] In Vermeersch-Creusen we read[3]:

> Verba *ordo publicus* satis parum definita sunt et ex voluntate legislatoris atque usibus receptis interpretationem recipiunt. Dici fortasse possit, ordini publico consuli per eas leges quae ad commune damnum avertendum potius quam ad promovendum bonum commune latae sunt.

A law instituting a local feast of precept could hardly be described as one the observance of which is necessary to avert injury to the common good—apart from the question of scandal arising from non-observance. In support of this view reference is made to a reply of the Congregation of the Council on a kindred matter. The Congregation was asked whether *peregrini* are bound to observe the Saturday abstinence during Lent—and on what day in places where by special arrangement of the Holy See the obligation is transferred from Saturday to Wednesday. The Congregation pointed out that a distinction must be made in regard to the law of Lenten abstinence between the substance of the law—which is that abstinence be observed on two days in the week—and the manner of observing the law which determines the days of abstinence. *Peregrini* are bound to observe the substance of the law as it is in force in the place in which they are—that is, they are bound to abstain on two days in the week. But since they are not bound to observe particular laws of the territory in which they are, they need not follow the local regulation of abstaining on Wednesday. The formal reply given by the Congregation to the particular question was that *peregrini* are bound to abstain on either Saturday or Wednesday (in addition to Friday) but they are free to select one or other of these two days provided scandal be avoided.[4] It would seem to follow from all this that, according to the mind of the Congregation, local abstinence laws are not amongst *leges quae ordini*

[1] Cf. Prümmer, *Manuale Th. Mor.,* i, n. 195; Davie, *Moral and Pastoral Theology,* i, pp. 161-2; Mahoney, *Questions and Answers,* 'The Sacraments,' pp. 124-5.
[2] Van Hove, *Eph. Th. Lov.,* i, pp. 153–67.
[3] *Epit. Jur. Can.,* i, n. 110.
[4] *A.A.S,* xvi (1924), pp. 94-5. English translation in Bouscaren, *Canon Law Digest,* i, pp. 54-5.

publico consulunt. And we can argue from the close parity between local abstinence laws and local laws setting up a particular feast of precept, that the latter likewise are not *per se* —that is apart from the danger of scandal—*leges quae ordini publico consulunt.* In direct reply then to our correspondent's query we would say that English Catholics who are *peregrini* in Ireland are not bound—again apart from the danger of scandal —to attend Mass on St. Patrick's Day. As we have mentioned earlier, the general tenor of the description, and illustrations given by the authors[1] in commenting on the phrase *leges quae ordini publico consulunt,* point to this conclusion. It is also the conclusion of the few authors[2] who mention the specific point raised in our correspondent's query.

THE PASCHAL PRECEPT

Is a normal child who reaches the age of seven in February, bound by the *Paschal* Precept that year ?

Parochus Perplexus.

In canon 859, § 1, the general rule is laid down that all the faithful, who have reached the use of reason, are bound to receive the Blessed Eucharist once a year during Paschal time. This canon incorporates the obligation of divine law to receive this Sacrament frequently during life. The obligation of divine law begins to bind once the use of reason has been attained. The age of seven has been selected as an approximation to the period when the normal child begins to reason. But some children reach the use of reason at an earlier, others at a later age than seven.[3] Thus the obligation of divine law may begin to bind before the age of seven.

The canon expresses, moreover, a twofold obligation of ecclesiastical law, namely, to receive the Blessed Eucharist once a year, and to receive it during Paschal time. The obligation of ecclesiastical law does not begin to bind until the child has reached both the use of reason and the age of seven.[4] Our

1 Cf. Noldin, *De Principiis,* n. 152 ; Prümmer, loc. cit. ; Vermeersch-Creusen, loc. cit. ; Davis, loc. cit., writes : ' A stranger (i.e. a *peregrinus)* is not bound to observe a particular local law of fasting, abstinence, attendance at Mass, if no scandal arises.'

2 Cf. Mahoney, loc. cit. ; Connell, *Outlines of Moral Theology,* p. 34.

3 In the decree of the Congregation of Sacraments, *Quam Singulari,* August, 1910, we read : ' Aetas discretionis tum ad Confessionem tum ad S. Communionem ea est, in qua puer incipit ratiocinari, hoc est circa septimum annum, sive supra, sive etiam infra,' n. 1.

4 Canon 12.

correspondent has underlined the word *Paschal.* We take it that he is interested in the second obligation of ecclesiastical law which requires reception of the Blessed Eucharist during Paschal time. He refers to a 'normal child' to indicate, presumably, that the use of reason has been reached at the age of seven. On this presumption the ecclesiastical precept begins to bind the child as from February. The obligation, however, is positive. It does not bind *pro semper.* It need not be discharged immediately, nor within a brief period. Accordingly the child who reaches the age of seven, and presumably the use of reason, in February, is not bound to receive the Blessed Eucharist during Paschal time that year.[1]

At the same time it must be remembered that the Paschal period is determined *ad urgendam obligationem.* Thus the obligation of ecclesiastical law that the Blessed Eucharist be received once a year still binds even after Paschal time has ended.[2] And we think that the child of whom there is question here, while not bound to receive Communion during the Paschal period, should do so within a year. It is the duty of 'Parochus' to see that those who have attained the use of reason and are sufficiently disposed should receive the Eucharist *quam-primum.*[3] A reasonable cause will justify a temporary postponement.[4]

IS THERE AN OBLIGATION TO INFORM THE PARISH PRIEST REGARDING THE FULFILMENT OF THE PASCHAL PRECEPT?

If a person fulfils the Paschal precept outside his own parish, is he bound under pain of sin to inform his parish priest?

Subscriber.

Under the pre-Code law the faithful were gravely bound, in fulfilment of the Paschal precept, to receive Holy Communion in their own parish church or from the hands of their own parish priest.[5] The Code has greatly modified this discipline. The strict obligation has been suppressed and in its place we find merely a recommendation that the faithful should fulfil the Paschal precept in their own parish—not necessarily in their parish church. It is added in the Code that those who satisfy their obligation by receiving Holy Communion outside their

1 Cf. Cappello, *De Sac.,* i, n. 475, 7.
2 Canon 859, § 4.
3 Canon 854, § 5.
4 Canon 859, § 1.
5 Cf. Coronata, *De Sac.* i, n. 3^5.

own parish should take care to inform their proper parish priest that they have fulfilled their obligation. Our correspondent's query is concerned with the precise implication of this latter prescription of Code law. The text of the law runs thus :[1]

Suadendum fidelibus ut huic praecepto satisfaciant in sua quisque paroecia ; et qui in aliena paroecia satisfecerint, curent proprium parochum de adimpleto praecepto certiorem facere.

The term *curent,* by reason of its subjunctive or imperative form, suggestes a command and, therefore, an obligation. Moreover, in the context under consideration here, there is a contrast between the term *suadendum* used in the opening phrase and the term *curent* used later on. Thus according to the proper signification of the word *curent,* in its text and context, an obligation is expressed. This interpretation is confirmed by parallel usage. It does express an obligation in other canons of the Code.[2] The purpose of the provision that the proper parish priest be informed when the paschal precept has been discharged outside the parish, is to ensure that the pastor may know whether the members of his flock have fulfilled their grave duty. The pastor has a right to this knowledge. He is expected to keep a *Liber de statu animarum.*[3] The interpretation indicated above is given in Vermeersch-Creusen—where it is noted, and all agree, that the obligation to inform the proper parish priest is only light :

Absolute positum verbum *curent* iussionem significat, quam tamen levem esse contexta oratio demonstrat.[4]

Mahoney[5] also prefers the view that *curent* expresses a precept—though not binding *sub gravi.* It is in place to remark here that any reasonable cause will excuse from the observance of a law which imposes only a light obligation.

Many theologians and canonists take the milder view that, in the context of canon 859, § 3, *curent* expresses only a counsel or recommendation, not an obligation. Cappello, for instance, writes 'Agitur solum de *consilio* quod proinde ne sub levi quidem adstringit.'[6] And in Wouters we read :[7] 'Ccrtioratio

1 Canon 859, § 3.
2 E.g. Canon 787.
3 Cf. Canon 470.
4 *Epit. Juris Can.,* ii, n. 128.
5 *Questions and Answers, The Sacraments,* p. 194.
6 *De Sac.,* i, n. 475.
7 *Manuale Th. Mor.,* i, n. 1111, cf. Aertnys-Damen, *Theol. Mor.,* i, n. 1071. Some writers cite the two views without expressing any preference, e.g. Coronata, loc. cit. ; Davis, *Moral and Pastoral Theology,* iii, p. 220 ; Jone-Adelman, *Moral Theology,* n. 396. Other authors give the text of the Code without comment, e.g. Noldin, *De Praeceptis,* n. 694 ; Prümmer, *Man. Th. Mor.,* iii, n. 212.

proprii parochi de consilio potius quam de praecepto esse censeatur.' An argument for this view is found in the general tendency of the Code law to remit unnecessary, obligations in regard to the fulfilment of the Paschal precept. As against the suggestion that the pastor should know whether his parishioners have fulfilled their Easter Duty, it is pointed out that in populous and extensive parishes it will be difficult for him to know this even when Holy Communion is received within the confines of the parish. There is also the difficulty that possibly very many parishioners would have to approach the parish priest at considerable inconvenience to all concerned. These arguments are not without some force—and the last-mentioned consideration would certainly often suffice to excuse from any obligation that exists. But, in our view, there is no convincing argument that the word *curent,* in our context here, expresses merely a counsel—though, of course, this view must be regarded as probable. The juridical arguments all suggest that an obligation is implied. But, as we see the question, it is possible to hold that while *per se* the term in question does imply an obligation—this obligation has ceased to bind by reason of general, long-continued and accepted non-implementation.

POWER OF RELIGIOUS SUPERIOR TO DISPENSE FROM THE LAW OF FASTING

Has the Superior of a Religious Congregation of priests power to dispense *(justa de causa)* one of his priests from fasting on a fast day outside Lent ? Or can the Superior only interpret the law just as any of his priests can ?

Student.

In canon 1245, § 3, the Superiors of exempt clerical religious institutes are given power, similar to that enjoyed by parish priests,[1] to dispense in the law of fast and abstinence. The term ' Superiores ' in this case includes local Superiors.[2] They can exercise their power of dispensing in the law of fast and abstinence in favour of the professed members and novices of their houses and also in favour of all who reside, day and night,

[1] Cf. Canon 1245, §1. The power can be exercised only 'in casibus singularibus iustaque de causa ' in favour of their subjects individually or as comprising individual families. Subjects can be dispensed even when they are outside the territory of jurisdiction. *Pertgrini,* who are within that territory, can also be dispensed.

[2] Cf. Vermeersch-Creusen, *Epitome Juris Canonici,* ii, n. 556.

in these religious houses by reason of service, education, hospitality or illness.[1] In granting this power of dispensation the law makes no distinction between days of fast during Lent and during any other part of the year.

It is clear then that, so far as the general law is concerned the answer to 'Student's' query will depend simply on whether the clerical religious institute, of which he writes, is, or is not, exempt. If it is exempt, the Superior can, *justa de causa,* dispense his subject priest from the fast during Lent or on any other fast-day. If the religious institute is not exempt the Superior has not power from general law to dispense from the fasting obligation.[2] In this hypothesis he may only declare whether or not, in his opinion, there is a sufficient cause for excusation from the obligation. There is not enough evidence in the statement of the query for a decision as to whether the clerical religious institute referred to is exempt. Our correspondent uses the term Religious Congregation. The technical meaning of this term is a religious institute in which the members take only simple vows.[3] And religious of simple vows do not enjoy the privilege of exemption unless it has been given to them by special grant.[4] Accordingly, if 'Student' has used the term Religious Congregation in its technical meaning, he will have to find out if a special grant of the privilege of exemption has been made to it. On the other hand, if there is question of regulars—that is of members of an order or religious institute in which solemn vows are taken—the privilege of exemption is granted by law.[5]

THE LAW OF ABSTINENCE AND SOME CURRENT PRACTICES

Many country people, on days of abstinence,

(1) fry slices of bread, in dripping, on a pan ; or

(2) make hot beef or bacon gravy and soak their bread in it ; or

(3) spread coagulated beef or bacon gravy on bread, just like butter, and so eat it.

Is this lawful ?

P.P.

1 Cf. Canon 514, § 1.
2 He may have this power delegated to him by the local Ordinary.
3 Canon 488, 2°.
4 Canon 618, §1.
5 Canon 615.

The law of abstinence is stated in canon 1250. It forbids, on days of abstinence, the eating of flesh meat and soup from flesh meat. It does not prohibit the eating of eggs, milk foods or any condiments even from the fats of animals. By condiment is meant that which is used or consumed, in small quantities, whether in liquid or in solid form, to make the principal food more palatable.[1] It is now clear from the Canon of the Code as well as from earlier replies of the Roman Congregations that the fats of any animal may be used as condiments. Dripping is the term used to describe the gravy of roasted meat. Lard is the rendered fat of hog[2] and to this, we think, bacon gravy may be equiparated.

Nomine adipis comprehenditur adeps cujusvis generis animalium, etiam, ut videtur, laridum liquefactum, utpote adipi aequiparandum.[3]

The three methods of preparing bread mentioned by P.P. are, in our opinion, so many examples of the use of animal fats as condiments and are, therefore, lawful on days of abstinence. It must be remembered that it is not necessary that the animal fats be used for cooking in order that they be rightly regarded as condiments. When bread is dipped in hot gravy or when the coagulated gravy is spread, like butter, upon bread—in each case the gravy retains the ratio of a condiment.

E dictis consequitur, licitum esse panem adipe linitum; tum quia dici potest, per modum condimenti sumi non solum illud, quod cum cibo coquitur, verum etiam illud quod ei mere saporis augendi gratia additur.[4]

In fact, it is fairly commonly maintained that it is lawful, on days of abstinence, to eat foods which are described as condiments, even when they are not used as condiments. There is no difficulty about that contention when there is question of condiments which are not derived directly from the fat of animals, e.g., butter. And since the prohibition of law doesnot distinguish between these and condiments derived from the fat of animals, it is held that the latter also may be taken. In Aertnys-Damen the following question is proposed:

An liceat vesci cibis quae sub nomine condimenti veniunt, sed non per modum condimenti?

And the reply given is:

Affirmative, et quidem certo ita vesci licet iis condimentis quae ab adipe distinguuntur, uti butyrum et similia; *verum* etiam satis probabiliter idem

1 Cf. Priimmer, *Th. Mor., ii, n. 663;* Vermeersch-Creusen, *Epitome Juris Can.,* ii, n. 565.
2 Cf. Davis, *Moral and Pastoral Theology,* u, p. 435.
3 Aertnys-Damen, *Th. Mor.,* i, n. 1040; Lumbreras, *De Fortitudine et Temperantia,* n. 196.
4 Wouters, *Th. Mor.* I, n. 1094.

dicendum videtur de condimentis ex adipe. Lex enim non distinguit; neque obstat quod lex unice verbum *condimenti* adhibeat; hoc enim ex eo explicari potest quod isti cibi ordinarie nonnisi per modum condimenti adhiberi solent.[1]

THE PRINCIPAL MEAL ON A FAST DAY

On a fast day may one take the principal meal at any hour that is suitable?

Jejunator.

The essence of the law of the ecclesiastical fast is that only one full meal be taken on the fast day. The law also allows some food morning and evening. This seems to suggest that the principal meal should be taken in the middle of the day. But in canon 1251, § 2, it is expressly stated that the principal meal may be interchanged with the evening collation. Consequently this principal meal may be taken in the evening. May it be taken also in the morning? The law does not expressly permit this arrangement. Nevertheless, if in particular circumstances the arrangement is more convenient, we think it may be followed without any essential violation of the law.

THE LAW OF ABSTINENCE AND THE USE OF SUET

In a recent number of a monthly magazine the following questions were asked. What foods are allowed on a day of abstinence? May lard, dripping or suet be used? In reply it was pointed out that the law of abstinence did not forbid the use of eggs, milk foods and condiments from animal fats. A condiment was defined as that which is taken, whether liquid or solid, in small quantity with food, to make it more palatable. The reply concluded with these words: 'Lard, the rendered fat of hog, and dripping, the grease that has dripped from toasted meat, may be taken as condiments. But suet is flesh meat and is forbidden.' The reply is puzzling, and housekeepers have been asking if they can use suet at all in their cooking on days of abstinence, I think they all have taken it for granted that there is no distinction in the use of lard, dripping, suet, etc.

P.P.

We agree that the reply referred to by our correspondent is somewhat confusing. If it is implied, as it seems to be, that suet may not be used as a condiment on days of abstinence, then we

[1] Loc. cit., n. 1042.

totally disagree with this point of the reply. The law of abstinence, stated in canon 1250, forbids the eating of flesh meat and soup from flesh meat. It does not prohibit the eating of eggs, milk foods or any condiments even from the fat of animals.[1] Suet is part of the fat of animals : it is the solid fatty tissue around the kidneys.[2] We see no reason why, on the words of the Code, this particular fatty tissue may not be used as a condiment in the preparation of other dishes.[3] Nor do we see any reason, from the point of view of the law of abstinence, for distinguishing between rendered suet and lard or dripping. We agree, of course, that it is a violation of the law of abstinence to consume a large quantity of suet, as an independent dish and not as a condiment. And perhaps it is this that the writer of the reply quoted by our correspondent has in mind.

THE OBLIGATION OF THE FAITHFUL TO SUPPORT THEIR PASTORS

Recently in a certain church a priest was preaching on the obligation of the faithful to contribute to the support of their pastors, in accordance with the fifth precept of the Church. But he concluded his discourse by stating that the people were bound to restitution if they failed to observe this precept. I have read the comments of several moralists on this subject. Their conclusion is that failure to contribute would be a mortal sin only if an individual refused to contribute when the pastors are really in need, or if the rest of the congregation are unduly burdened as a result of this refusal. Not one of the moralists mentions a word about restitution.

Your opinion on this matter would be appreciated by

Ver it a s.

It is the clear teaching of theology that the faithful are bound to contribute to the necessary support of their pastors.[4] This obligation arises from natural law as well as from divine positive law and ecclesiastical law. The natural law demands that provision be made for the rendering *of* public and social worship to God. For this worship pastors, as well as churches, are essential. It is expressly stated in Sacred Scripture[5] that there is an obligation to support the ministers of religion. The

1 Canon 1250 ' Quibuslibet condimentis etiam ex adipe animalium.'
* Cf. Wyld, *Eng. Diet.*
3 Cf Prümmer, *Th· Mor.*, ii, n. 663. Nomme condimenti venit quidquid (sive liquidum sive non liquidum) *modica quantitate* adhibetur, ut cibus nrinrioalis evadat sapidus e.gr. parvae et paucae partes laridi assati ad legumina-; cf. Vermeemeh-Cremen, J. C. ii. n. »5.
« CT St Thomas, *S. z-z,* o<>, I.
Number, 18 ; St. M.tr. x. 10: I Cor. ix, 13-14.

obligation has been written into ecclesiastical law at various points.[1] In view of the gravity of the purpose which is in question it must be held that this obligation is grave for the faithful generally. Individuals are bound to contribute according to their means. But it cannot be said that each and every member of the faithful is always bound *sub gravi* to give his share. Individuals would, however, be under a grave obligation to make their contributions if these were accurately determined, by law or custom, and if failure to make them would involve penury for the pastors or an undue burden on the other members of the faithful. Kenrick writes :[2]

Quamdiu nulla certa lege onus iniungitur et definitur non audemus peccati mortalis damnare eum qui omittit aequam proportionem conferre, quoties non est periculum ne sacerdotes ea de causa indigeant vel alii fideles nimis graventur.

It should be remembered that if a large percentage of the faithful were to fail to make a contribution, the danger referred to by Kenrick would quickly arise.

Our correspondent remarks that none of the moralists makes any mention in this context of an obligation of restitution. This remark is not strictly accurate. Some writers do say that *per se* an obligation of restitution rests on those who fail to make a due contribution for the necessary support of their pastors. But these writers add that the Church may, and usually does, forego her right to insist on restitution. Prümmer, for instance, having recalled that the obligation of contributing support arises from the natural law, the divine positive law and ecclesiastical law, writes :[3]

Ex quibus sequitur, ut ii, qui vectigalia ad cultum necessaria defraudant, duplex peccatum, scii, irreligiositatis et iniustitiae, committant ac proinde, stricte loquendo, ad restitutionem teneantur, nisi Ecclesia sponte renuntiet huic restitutioni exigendae.

Merkelbach makes a somewhat similar statement :[4]

Quamvis subsidium (ad sustentationem pastorum) impositum negantes duplex specie peccatum committant irreligiositatis atque iniustitiae, Ecclesia tamen non videtur ius suum urgere sub onere restitutionis.

The reference in these passages to a violation of justice, with a consequent obligation—at least *per se*—to make restitution, suggests that the writers have a violation of strict justice in mind—since an obligation of restitution arises only when strict

[1] Cf. Canon 1502.
[2] *Th. Mor.,* tr. iv, n. 64.
[3] *Manuale Th. Mor.,* ii, v. 499.
[4] *Summa Th. Mor.,* ii, n. 708.

justice has been violated.[1] But, apart from some special contract,[2] it is not possible to establish that there rests on the faithful an obligation of strict justice to contribute to the support of their pastors. St. Thomas regards the obligation as arising from religion and social or legal justice. He lists[3] the duty of making offerings and paying tithes among the obligatory acts of the virtue of religion and he later[4] compares this duty to that of paying taxes to maintain those who serve the common temporal good. Merkelbach recalls this view. Having noted that the Church does not urge the obligation of restitution for failure to contribute to the support of the clergy, he adds,[5] somewhat illogically: 'unde peccatum videtur potius opponi iustitiae legali quam commutativae.'

THE OBLIGATION OF PAROCHIAL DUES

I shall be grateful if you will kindly comment upon the question of parochial dues as affecting persons who (as individuals solely, people in partnership or members of limited companies or as employees of any of these) carry on business in one parish while residing in another. Granted that dues are paid in the parish of residence, how can any custom whereby business firms, which have no soul apart from the souls of the persons composing them, in practice pay dues to the clergy of the parish in which they carry on business be erected into an *obligation* to make such contributions?

Dominicus.

Among the obligatory external acts which pertain to the virtue of religion St. Thomas[6] lists the giving of offerings and the payment of tithes and first fruits *for the* support of the ministers of the Church and the maintenance of divine worship. The obligation to provide this support and maintenance arises partly from the natural law which demands that public and social worship, as well as private worship, be rendered to God.[7] The obligation has also been expressly formulated in divine positive law, and is re-stated in general ecclesiastical law. Particular statute or legitimate custom may define more closely

1 Ibid., nn. 254 et 295.
2 Cf. St. Thomas, loc. cit.
3 *S. T.* 2-2, 65 et 66.
4 Ibid., 67, 1.
5 Loc. cit.
6 *Summa Theol.*, 2, 2, qq. 86, 87.
7 Cf. Prümmer, *Manuale Th. Mor.*, u, n. 499.

die measure of the obligation.[1] It has been suggested by some writers that the faithful are bound in strict justice to make the contributions necessary for the upkeep of divine worship and the sustentation of the ministers thereof. But the existence of an obligation in strict justice cannot, we think, be convincingly demonstrated, and certainly it is not sufficiently established to justify the imposition of an obligation of restitution for default.[2] At the same time there can be no denying that the faithful generally arc under a grave obligation to provide the necessary support. The obligation arises from religion and from social justice. Under the latter aspect it is somewhat analogous to—though, by reason of the associated religious motive, more sacred than—the obligation of citizens to contribute from their property the just and necessary funds for the upkeep of the State and its services.[3]

In the Code of Canon Law certain relevant fundamental principles are recalled. It is categorically asserted[4*] that the Church, in pursuance of its special purpose, has, freely and independently of any civil power, the innate right to acquire, retain and administer temporal property. This right is vested not merely in the universal Church and in the Apostolic See but also in the individual churches and the other moral bodies juridically established by ecclesiastical authority.[6] The Church has also the right, again independently of the civil power, to demand from the faithful the means necessary for divine worship, for the suitable support of the clergy and other ministers and for the attainment of its other particular purposes.[6] The Church possesses these rights because it is, by divine institution and constitution, a perfect and independent society. There is ample historical evidence,[7] dating back to the earliest years, to show that the Church exercised these rights. An ecclesiastical precept obliging the faithful to contribute to the support of the Church and its pastors finds a fairly constant place in the catechetical formularies. The Pauline principle[8] that ' they who serve the altar should partake with the altar ' and ' they

[1] Cf. Noldin, *De Praeceptis,* n. 715.
[2] Cf. Merkelbach, *Summa Theol. Mor.,* ii, n. 708.
[8] ' Quod enim eis qui divino cultui ministrabant ad salutem populi totius, populus necessaria victus ministraret, ratio naturalis dictat, sicut et his qui communi utilitati invigilant, scilicet : principibus et aliis huiusmodi stipendia victus debentur a populo.'—St. Thomas, op. cit., 2, 2, q. 87, 1.
[*] Canon 1495, § 1.
[4] Canon 1495, §2.
[•] Canon 1496.
['] Cf. Thomassin, *Ancienne et Nouvelle Discipline de l'Eglise, pars* iii, c. 1.
[«]Cf. 1 Cor. ix, 13-4.

who preach the Gospel should live by the Gospel' was fully accepted. We may say that the right of the Church to demand support, and the correlative obligation of the faithful to provide it, have hardly ever been questioned within the true fold. The manner and the measure in which the support was given have indeed varied down the ages. In the early days the influence of the methods current under the Old Dispensation was strong.[1] Hence we find reference to the giving of offerings, first fruits and tithes—particularly to the last mentioned. Just as the tribe of Levi, the priestly tribe, was, in the Old Testament period, supported by tithes paid by the other tribes, so it was felt that, in the Christian system, the priests and the needs of religion should be maintained by the tithes contributed by the faithful.[2] It is not clear that the tithe was at any time interpreted strictly as a tenth portion of income or property. Sometimes more, very often less, was given. But the earliest evidence reveals a constant custom or practice of generous giving by the faithful. The generosity was particularly notable in the days of persecution. At the end of the sixth century the custom of tithes was given the formal status of a law to the non-fulfilment of which the penalty of excommunication was attached.[3] In the Carolingian régime the tithe was fully recognized as a fiscal obligation confirmed by civil law.[4] Later, as happened in many other spheres, the tithes were usurped and laicized by the secular princes and gradually fell into desuetude almost universally.[5] The canon law to-day simply states' that, in regard to the payment of tithes and first fruits, the particular statutes and laudable customs of each country are to be observed. Which is another way of saying that where the practice of such payment still exists it is to be preserved.

But, as we have noted, tithes, as such, are, *for the most* part, no longer paid. In their place we have generally, in this and in many other countries, the certain and voluntary offerings of the faithful. We may apply the canon just quoted to these offerings and say that in their regard also the particular statutes and laudable customs of the place are to be observed. With due regard for the requirements of equity, the Bishop can

[1] Cf. Villien, *A History of the Commandments of the Church,* p. 322.
[2] Cf. St. Jerome, *De Vita Clericorum, P.L.* xxii, 531.
[3] Cf. Villien, op. cit., p. 329; Coronata, *Institt. iur. Can.,* ii, n. 1041.
[4] At some periods, especially in the middle ages, it is clear that the faithful did not take kindly to the payment of tithes as an exacdy defined tax, and spiritual sanctions were necessary to ensure their payment.
[5] Cf. Coronata, loc. cit.
[6] Canon· 1502.

determine the manner, and the measure, in which the means necessary for the support of the clergy and the Church will be provided by the faithful. He may appoint collections for these as well as for other appropriate ecclesiastical purposes. The canon law refers explicitly to the bishop's right to command parish priests and other rectors of churches to hold collections for the setting up of a seminary and the support of its students.[1] It is also pointed out in the law[2] that the onus of repairing the Cathedral or parochial church may fall upon the faithful of the diocese or parish respectively, but that the local Ordinary is to exhort rather than coerce them to contribute, according to their capacity, for this purpose. If there are no particular statutes or regulations, we must look to custom to determine the manner of fulfilment of the obligation of the faithful to support the Church and the clergy. In this country custom has decreed that offerings shall be made by the faithful at certain collections during the year, and on the occasion of the administration of some of the sacraments, and of the performance of some other ecclesiastical functions. Apart from special circumstances, no very exact or definite rate of taxation is imposed. Yet it is rightly expected that the capacity of a person to pay shall be a factor in determining the amount of his contribution. The faithful are gravely bound to contribute the necessary support.[3] But in regard to the precise amount of their contributions, the appeal is principally to their spirit of generosity to give according to their means. If business firms as such, that is, as distinct from the individuals who compose them, customarily contribute, then this custom is to be maintained. As we have pointed out, in the absence of written statute or episcopal regulation, it is custom which determines the manner in which the necessary support will be provided for the upkeep of religion. In these circumstances, custom has the force of law and is the basis for the obligation. It is perfectly fair that business firms, companies, etc., should make the customary contributions for the support of religion. They have an entity distinct from the individuals who compose them and business, like all human institutions, is benefited by the maintenance of true religious teaching. Religion serves the common good in every department. The support of religion is a duty based in part on

1 Canon 1355, 1.

2 Canon 1186.

3 In most of the modern Catechisms the fifth commandment of the Church is stated thus : '*To* contribute to the support of our pastors ' and it is added, by way of explanation, that the obligation is that all the faithful should contribute according to their means.

property. The tithes historically were more a real than a personal tax. It is true that to-day the personal element is more emphasized. This personal aspect is more particularly obvious in the case of offerings made on the occasion of the administration of some of the sacraments, etc. (stole fees;. Nevertheless the real obligation should not be lost sight of or ignored. This real obligation—a sort of property tax—is a very important factor in stabilizing the Church revenues of a particular parish or territory. If the transfer of property—say of business or lands—to one living outside the parish were to be accepted as a good ground for the withdrawal of contributions made, on foot of this property, by the former holder, the revenues of the parish might suffer severely, to the consequent detriment of religious worship and the status of the clergy.

THE OBLIGATION OF ALMSGIVING

I should feel very much obliged for a solution of the following difficulty :

As a teacher of Sociology I am puzzled by the seeming opposition of Pope Leo XIII and St. Thomas Aquinas on the one hand and that of Mgr. Cronin on the other, with regard to the moral obligation of almsgiving. What makes it more bewildering is the fact that the Monsignor expressly invokes the authority of both Leo and Aquinas in support of his thesis. That thesis is : Outside cases of extreme need there is no obligation in justice or charity on the rich to give of their superfluities. Thus he writes *(Social Science,* p. 40) : ' St. Thomas makes the explicit statement that, unless an individual is in extreme need there is no binding obligation to give away superfluous wealth. It is then only a counsel. From which it follows that there can be no absolute obligation to give away all superfluous wealth.' And later he writes : ' To give superfluous things to one not in extreme need, he (St. Thomas) regards as a counsel of perfection and not an obligation of any kind either in justice or charity.' This doctrine, he adds, has been approved by the Pontiff above mentioned.

But, on the contrary, St. Thomas writes (2, 2, q. 66, a. 7) ' Et ideo res quas aliqui superabundanter habent, ex naturali iure debentur pauperum sustentationi '—and elsewhere to the same effect. Also Pope Leo writes *(Quod Apostolici Muneris)* : ' Moreover she (the Church) lays the rich under strict command to give their superfluous goods to the poor impressing them with the fear of divine judgment which will exact the penalty of eternal punishment unless they succour the wants of the needy.' And in *Rerum Novarum* the same Pontiff says : ' No one is commanded to distribute to others that which is required for his own needs and those of his household ; nor even to

give away what is reasonably required to keep up becomingly his condition of life . . . But when what necessity demands has been supplied, and one's standing fairly taken thought for, it becomes a duty to give to the indigent out of what remains over. It is a duty not of justice (save in extreme cases) but of Christian charity.' Here the Pope seems to imply that there is an obligation in justice to give alms in extreme cases, whereas Monsignor Cronin claims the authority of St. Thomas for the view that a man is bound to give out of what is superfluous to a person in extreme need only in charity.

Would you please say what exactly is the Catholic doctrine on this matter and if it is possible to harmonize the above seemingly, at least, conflicting views ? The matter is practical and important.

Teacher.

Our correspondent's query suggests that he has fundamentally a two-fold difficulty. It can, perhaps, be best expressed in the form of two questions. Firstly, does the obligation to give superfluous goods in alms to the needy derive from the virtue ofjustice, or from charity ? Secondly, is the obligation present only when one who has superfluous goods meets a case of extreme need ? Our correspondent has other difficulties—in particular the difficulty that the answers given by Catholic writers to the above questions do not all seem consistent. That any fairly adequate solution of those difficulties may be reached it will be necessary to discuss them at some length and to make frequent reference and appeal to the teaching of St. Thomas on the question at issue.

Our reply to the first question stated above is that the obligation of almsgiving arises from the virtue of charity. This is the teaching of St. Thomas, as Monsignor Cronin rightly claims. In the *Summa*[1] it is categorically stated and proved that almsgiving is an act of charity. It is brotherly love in action.[2] The objection is raised that almsgiving is one of the satisfactory works. The making of satisfaction pertains to justice ; therefore almsgiving is an act of justice. St. Thomas replies :[3]

> Nihil prohibet, actum, qui est proprie unius virtutis elicitive, attribui alteri virtuti, sicut ordinanti, et imperanti ad suum finem : et hoc modo dare eleemosynam ponitur inter opera satisfactoria.

In a later question[4] St. Thomas discusses the obligations of

[1] 2, 2, q. 32, a. 1.
[2] Ibid. a. 5.
[3] Ibid. a. 1, ad 2.
[4] 2, 2, q. 185, a 7. Italics St. Thomas'.

bishops in regard to their *superflua.* His reply is very interesting and well worth Quoting at length here. It runs :

> Aliter est dicendum de *propriis* bonis, quae Episcopi possidere possunt, et de bonis *ecclesiasticis :* nam propriorum bonorum verum dominium habent ; unde ex ipsa rerum conditione non obligantur ut ea aliis conferant ; sed possunt ea vel sibi retinere, vel etiam aliis pro libito elargiri : possunt tamen in eorum dispensatione peccare propter inordinationem affectus ; per quam contingit, vel quod sibi plura conferant quam oporteat, vel aliis etiam non subveniant secundum quod requirit debitum charitatis : non tamen tenentur ad restitutionem ; quia huiusmodi res sunt eorum dominio deputatae. Sed ecclesiasticorum bonorum sunt dispensatores - - - ; si ergo distincta sint bona quae debent in usum Episcopi cedere, ab his quae sunt pauperibus et ministris, et cultui Ecclesiae eroganda, et aliquid sibi retinuerit Episcopus de his, quae sunt pauperibus eroganda, vel etiam in usum ministrorum, aut in cultum divinum expendenda, non est dubium quin contra fidem dispensationis agat, et mortaliter peccet et ad restitutionem teneatur. De his autem, quae sunt specialiter usui suo deputata, videtur esse eadem ratio quae est de bonis propriis ; ut scilicet propter immoderatum affectum et usum peccet quidem si immoderate sibi retineat et aliis non subveniat sicut requirit debitum charitatis . . .

If Bishops are bound only in charity to distribute their superfluous ecclesiastical goods to the needy surely we may say that private laymen are not under the stricter obligation of justice in this same matter ? [1]

The vast majority of Catholic writers follow the teaching of St. Thomas on this question. The obligation, they say, to devote superfluous goods to the relief of the needy is an obligation of charity, not of justice. Pope Pius XI, in his encyclical *Quadragesimo Anno,* wrote :[2] 'A man's superfluous income is not left entirely to his own discretion. We speak of that portion of his income which he does not need in order to live as becomes his station. On the contrary, the grave obligations of charity, beneficence and liberality, which rest upon the wealthy, are constantly insisted upon in telling words by Holy Scripture and the Fathers of the Church.'

What, then, is to be said of the statements quoted by 'Teacher,' which seem to imply an obligation in justice ? Firstly, let us take the statement of St. Thomas. It is quoted from a question[3] entitled : 'Utrum liceat alicui furari propter necessitatem ? ' To which St. Thomas says, among other things, in the course of an affirmative reply, that 'superabundant possessions are by the natural law destined for the support of the poor.' From this statement it by no means follows that the

[1] Cf. ibid., ad 1.
«C.T.S. trans., p. 24.
• 2, 2, q· 66» a· 7.

obligation to give alms is one of strict justice. Obligations of charity pertain to the natural law as nearly as those of justice.

We might remark here that when St. Thomas speaks of goods becoming 'common' in certain circumstances he makes it clear that he is referring not to common ownership but to a community of use.[1] The encyclicals[2] also clearly distinguish the right of property from its use. The former pertains to commutative justice; the latter [8] does not fall under this form of justice but under certain other virtues.'[3] Apropos of this it may further be remarked that St. Thomas uses the word *iustitia* not merely to mean justice in the strict sense or commutative justice, but also to mean a general virtue which he calls legal justice[4]—per quam 'homo concordat legi ordinanti actus omnium virtutum in bonum commune'[5] the virtue which directs the maintenance of a certain equitable equilibrium between the individual and the common good in all things and, therefore, in the use of things for the common good. Needless to say almsgiving may pertain to this general virtue of legal justice.

When Pope Leo XIII stated, as quoted by our correspondent, that almsgiving was 'not a duty of justice (save in extreme cases) but of Christian charity'[5] he did not mean that it was a duty of commutative justice to give *superflua* to those in extreme need. He may have understood by the word *iustitia* the legal or general justice to which we have just referred[6]; or, alternatively, he may have implied more by the phrase *in rebus extremis* than the translation 'in cases of extreme need' represents.

There is no necessity to labour the obvious point that there is an obligation in charity to give alms out of superfluous goods to the needy. The obligation may be grave and this is sufficient to warrant the quotation given by 'Teacher' from the encyclical *Quod Apostolici Muneris.* But in what circumstances does the obligation arise? St. Thomas poses the question:[7] 'Utrum dare eleemosynam sit in praecepto?' Needless to say the

[1] Cf. 2, 2, q. 32, a. 5, ad 2, ibid., q. 66, a. 1, 2, 7.
[2] *Rerum Novarum* (C.T.S. trans.), p. 25; *Quad. Anno,* p. 21.
[3] *Quad. Anno,* loc. cit.; cf. Nell-Breunmg—*Reorganization of the Social Economy,* p. 101 *et seq.*; Cronin: *Principles of Social Science,* p. 38.
[4] 2, 2, q. 58, a. 5, 6, 7. 'La justice sociale n'est en effet qu'une dénomination plus adaptée a la pensée moderne que celle qu'emploie saint Thomas d'Aquin: justice générale ou légale' Rutten.—*La Doctrine Sociale de l'Église,* p. 67.
[5] Loc. cit., a. 5.
[6] Cf. Prümmer, *Theol. Mor.,* i, n. 589.
[7] 2, 2, q. 32, a. 5.

reply is an emphatic affirmative. In the course of the reply the circumstances in which the obligation may arise, and may be grave,[1] are outlined. The discussion is important. It touches the second difficulty raised by 'Teacher' and it seems to be that which Monsignor Cronin had in mind when he wrote: [2] St. Thomas makes the explicit statement that unless an individual is in extreme need there is no binding obligation to give away superfluous wealth. It is then only a counsel.'[3]

In the question we are considering St. Thomas notes that, in order to determine when an obligation of almsgiving is present, two considerations must be taken into account.

> Ex parte quidem dantis considerandum est ut id quod est in eleemosynas erogandum, sit ei superfluum - - - Ex parte autem recipientis requiritur quod necessitatem habeat . . . Sed non omnis necessitas obligat ad praeceptum, sed illa sola, sine qua is qui necessitatem patitur, sustentari non potest . . .

He concludes:

> Sic ergo dare eleemosynam de superfluo est in praecepto, et dare eleemosynam ei, qui est in extrema necessitate; alias autem eleemosynas dare est in consilio.[3]

Later he explains when the obligation may be grave.[4]

There is no doubt whatsoever that when extreme need confronts one who has superfluous goods there is an obligation to give alms. But is this the only case in which the obligation arises? In other words apart from this case is almsgiving a counsel of perfection? Some writers[5] have answered those questions in the affirmative and have taken the above quoted text of St. Thomas as supporting their view. It states, those writers say, that the recipient must be in extreme need and at same time the donor must have *superflua (statui).* The passages quoted by our correspondent from Monsignor Cronin's book seem to advocate this view and the conjunctive interpretation of the text of St. Thomas.

Writers generally, however, maintain that the obligation of almsgiving has a much wider application, and they reject the conjunctive interpretation of the conditions laid down by St. Thomas. Cajetan wrote an indignant *opusculum* on this very point against those writers who

[1] Loc. cit., ad 3.
[2] Op. cit., p. 40.
[3] 2, 2, q. 32, a. 5, 6.
[4] Ibid., ad 3.
[5] **S. Antoninus, Medina, Abbas Siculus, Rosellara.**
[6] *De Eleemosynae Praecepto ad mentem S. Thomae* (1496).

Non malitia scd minus perspicaci intellectu in hac re ducti, imponunt S. Doctori ex 2, 2, q. 32, erroneam et procul ab humanis finibus opinionem circa eleemosynarum largitionis necessitatem.[1]

He advances many arguments[2] for a disjunctive interpretation of the above mentioned text of the *Summa.*[3] In many other passages[4] of his writings St. Thomas clearly teaches that the obligation of almsgiving may arise from a twofold factor, that is, either from the possession of superfluous goods or from the fact that some individual is in extreme need—or the community in grave need. Cajetan refers to those passages. He, moreover, maintains that the correct grammatical interpretation of the disputed passage is the disjunctive interpretation.[5] This interpretation would correspond with what St. Thomas himself calls the common opinion in his own day as we have remarked. It is also the common, almost universal, teaching to-day. A modern representative theologian[6] writes :

Praeceptum eleemosynae oritur ex duplici capite (a) si adsit superfluum ex parte dantis ; (b) si adsit vera necessitas ex parte indigentis.

Another writes of the conjunctive interpretation :

Haec sententia hodie obsoleta est.

Modern theologians[7] firstly lay down the general principle that there is an obligation, from natural law as well as from divine positive law, to give alms out of superfluous goods to the needy. When this general principle is applied to particular cases, two factors have to be taken into account : the degree of necessity of the person to be helped, and the capability and capacity of the giver to help. It is hardly necessary to remark here that three degrees of need, extreme, grave, and ordinary, are usually enumerated. We take it that our readers are familiar with the meaning of those degrees. We take it, too, that they understand the division of goods into those which are *necessaria vitae, necessaria statui {sed superflua vitae')* and *superflua statui.* Having taken those factors into account, further principles emerge. There is an obligation, in charity, to help extreme need, or the community in grave need,[8] out of *superflua statui*—

[1] Op. cit., n. 2.
[2] We can only refer to a few of them here. Some are very convincing, others less so.
[3] Viz., 2, 2, q. 32, a. 5, c.
[4] Cf. *In iv Sent.* d. 15, q. 2, a. 1, sol. 4 ; 2, 2, q. 66, a. 2 et 7 ; 2, 2, q. 87, a. 1 ad 4 ; 2, 2, q. 118 a. 4, ad 2 ; *Quodlibet.* 7, q. 6, a. 2.
[5] Op. cit., n. 13.
[6] Merkelbach, *Theol. Mor.,* i, n. 929.
[7] Priimmer, op. cit., n. 593.
[8] Cf. St. Thomas, 2, 2, q. 32, a. 6.

and also, according to the common opinion, out of *necessaria statui sed superflua vitae.*[1] It is moreover commonly taught to-day that there is an obligation to help grave individual need[2] and even ordinary need, at least now and then, out of *superflua statui.*

It follows from what we have written that there is no divergence of opinion between Monsignor Cronin and the other authorities mentioned, regarding the source of the obligation to give alms. It derives from charity as we have explained. Monsignor Cronin, however, would seem to restrict unduly the extent of the obligation—confining it to the case when, if we may say so, *superflua statui* meet extreme need. This restriction seems to be implied in the passages to which reference has been made by 'Teacher.' But in the context it is clear that the author's chief concern is to rebut the view that a man has no right to his superfluous goods, and that he is, therefore, bound in justice, or if not in justice certainly in charity, to give them *all* away. This, we think, is his main thesis as expressed in the italicised questions. Moreover, Monsignor Cronin has added, in the second edition, an interesting passage in the section under discussion to which we direct our correspondent's attention. The passage follows upon the second statement quoted by 'Teacher' from Monsignor Cronin and reads :[3] 'It should be remembered, however, that in these days there is always grave need somewhere to be alleviated, and, therefore, though there is no obligation to give away all one's superfluous goods, there is an obligation in charity to give a reasonable amount out of what is superfluous.' 'Teacher' realizes that the existence of an obligation to help extreme, grave and even ordinary need out of superfluous goods does not imply that one is bound to distribute *all* of them in alms. We have quoted the reference of Pope Pius XI to obligations of charity, beneficence and liberality. The Holy Father went on[4] to say that 'the investment of superfluous income in securing favourable opportunities for employment, provided the labour produces results which are really useful, is to be considered according to the teaching of the Angelic Doctor, an act of real liberality, particularly appropriate to the needs of our time.'

[1] Pope Innocent XI condemned the following proposition : 'Vix in saecularibus invenies etiam in regibus, superfluum statui. Et ita vix aliquis tenetur ad eleemosynam quando tenetur tantum ex superfluo statui.' Denz. "'a Cf2St. Thomas, 2, 2, q. 32, a. 6. and q. 44, a. 8; St. Alph. *TtuoL Afar.,*

[3] ^bp. cit., 2nd ed., p. 41. Cf.. p. 109 (1st ed.), p. 113 (2nd ed.).

[4] C.T.S. trans., p. 24. Ca. Nell-Breumng, op. cit., pp. 114-115.

A final point: Monsignor Cronin does not, as 'Teacher' suggests, invoke the authority of Pope Leo XIII for the doctrine that the *obligation* to give alms arises only when one who has superfluous goods meets extreme need. 'The authority of the Pope is invoked to show that there is not an obligation to distribute *all* one's superfluous goods.[1] That this was the teaching of Pope Leo is indicated by his use,[2] following St. Thomas, of the phrase *de superfluo* meaning 'out of what is superfluous.' Pope Pius XI wrote:[3] 'A man's superfluous income is not left *entirely* to his own discretion.'

OBLIGATION OF CLERICS TO DISTRIBUTE SUPERFLUOUS INCOME—THE TEACHING OF SAINT THOMAS

A commentary on the following extract from ***A Life of Our Lord***, by Vincent McNabb, especially on the teaching of St. Thomas which it proposes to embody, would be of great interest and value to clerical readers. The obligation of disposing of superfluous ***bona beneficialia*** is expressly imposed by Canon Law and it is clear, moreover, that the bounds of obligation are far more widely extended in regard to almsgiving, etc. But what of the obligation in regard ***to all one's surplus***, from whatsoever source derived? Or at least is there not a great need, on the part of many of us, of giving much greater heed to the inspiring call of perfection in this matter of disposing of superfluities?

The extract from McNabb (pp. 102-103) reads: 'When this brotherhood of Man in the Brotherhood of God-made-man is realized, the mind that realizes it is prepared for a further practical doctrine which we shall give on the authority of St. Thomas Aquinas. A Pharisee having invited our Blessed Lord to dine with him was scandalized because his Guest had not washed Himself before dinner. The Guest's answer to His host was a very vehement denunciation of the Pharisees in which He thrice cries: 'Woe to you, Pharisees,' and once calls them 'Ye fools.' In this denunciation occur the words: 'But yet that which remaineth give alms.' (Luke xi. 41.)

Five times in his ***Summa Theologica*** St. Thomas deals with these words and sees in them the duty of distributing superfluous wealth. The simplest and fullest expression of his mind is the following: 'The third kind of tithe which they had to eat with the poor is increased in the New Law; for Our Lord commanded us to give to the poor not merely the tenth part ***but all our surplus*** according to Luke xi. 41. Moreover the tithes that are given to the ministers of the Church should be dispensed by them for the benefit of the poor' (2, 2, q. 87, a. 1, reply to f—Eng. trans.).

1 Cronin, op. cit., p. 40 footnote.
2 *Rerum Novarum*, n. 19; cf. St. Th. 2, 2, q. 32, a. 5.
3 Loc. cit., italics ours.

Our Blessed Lord clearly taught the average men, as the Baptist had taught, the duty of distributing superfluities. But Jesus had chosen from the average men around Him a group of Apostles, called to more than average, i.e., to heroic, virtue.

Clericus.

Our main preoccupation here must be with the teaching of St. Thomas; but, in view of the statement of the query, it will not be out of place to make some more general introductory remarks. The doctrine of the brotherhood of men in the Fatherhood of God is a central and a focal point of Christ's message. From that doctrine clearly follows our obligation to help our necessitous fellow men in the temporal as well as in the spiritual sphere. We are bound to love one another with charity of the brotherhood, and our willingness to help the other's need is the touchstone of the genuineness of our love of God and man.[1] We must love not alone in word but in very deed.[1] The obligation to render mutual help was not, indeed, unknown before the time of Christ. The command to have the open hand for the poor and needy is expressly stated in Deuteronomy.[3] The command was echoed by the Baptist.[4]* But Christ, as so befitted the doctrine He unfolded, gave this obligation of love and help a new motive, a wider ambit, and a greater emphasis. He reminded His followers that upon its observance depended their eternal fate. It would be the final test upon the judgment day.[6] From the very beginning the Christian writers rang the changes upon this duty of helping the needy brethren, and the early Christians discharged it in a manner more perfect than was ever known before or since.[®] The Fathers of the East and the West speak with one voice of the obligation of the wealthy to use their superfluous *goods for the* relief of those in need. One almost quails before the vehemence of some of their denunciations[7] of the luxury and avarice of the rich who fail in this duty and so pervert the plan of the Creator, whose will is that material goods should serve the needs of all.

[1] Cf. [1] John iii, 17.
[2] Ibid., v. 18.
[3] xv. 11.
[4] Cf. St. Luke iii, 11, 'Let him who has two tunics share with him who has none; and let him who has food do likewise'—That was the Baptist's reply to the crowd who asked him what they were to do.
[5] Cf. Description of Last Judgment, Matt, xxv, 31-46.
[6] Cf. Acts iv, 34–35.
[7] The language used is so forthright and condemnatory that enemies of the Church invoke it as an argument that the early Christians rejected private property.

In the light of all this we are not surprised to find many passages in the works of St. Thomas in which the obligation of almsgiving is eloquently stressed. We have such passages in his Commentary on the Sentences, in his *Catena Aurea,* in his Commentaries on St. Matthew and St. John, in his *Quaestiones Quodlibetales* and in very many places in his *Summa Theological* In this last mentioned work we have the most mature expression of St. Thomas' thought—and in it too we have the fullest treatment of the obligation of almsgiving. There have been, there still are, controversies as to what exactly St. Thomas held regarding the actual incidence of the obligation.[1] But certain main principles emerge incontrovertibly at every point of discussion. Almsgiving is a duty.[3] It is charity to the neighbour in act. It is a matter of precept, but the precept is positive, not negative. As such it does not bind *pro semper.* When, then, does it bind? The obligation may arise by reason of the possession of superfluous wealth[4]*(superflua statui) ex parte dantis,* or by reason of extreme need—*ex parte recipientis.* To elaborate: if a person has superfluous wealth there is an obligation to help need—even need that is less than extreme; and there is an obligation to help extreme need even though one has only *superflua vitae* and not *superflua statui.* But if there is neither superfluous wealth *(superflua statui)* nor extreme need, then there is no *obligation* to give alms. To give non-superfluous wealth to help need that is not extreme, apart from disproportionate injury[6] to the giver or to his dependents, is a counsel of perfection. That is what St. Thomas means when he writes[0]:

Sic ergo dare eleemosynam de superfluo est in praecepto et dare eleemosynam ei qui est in extrema necessitate; alias autem eleemosynas dare est in consilio.

It is not easy to decide what comes under the term superfluous wealth. Pope Pius XI describes a man's superfluous income

1 In the space at our disposal here we can only give some representative references and quotations.

2 Cf. Cajetan, *De Eleemosynae Praecepto ad mentem S. Thomae.* Cf. previous reply.

3 *S.T.,* 2, 2, q. 32, a. 5; cf. *In iv Sent.* d. 15, q. 2, a. 1, Sol. 4.

4 We shall very frequently have to use the phrase 'superfluous wealth.' There are really two degrees of such superfluity—*superflua vitae* and *superflua statui*—as they are called. It is the latter degree which generally will be in question and it is to this we refer whenever we speak of superfluous wealth or income without further qualification.

6 If such injury ensues it is unlawful to give, cf. *S.T.,* 2, 2, q. 32, a. 6. In reply to the question: 'Utrum quis debeat dare eleemosynam de necessario,' St. Thomas gives the general rule 'Necessarium dicitur uno modo sine quo aliquid esse non potest, et de tali necessario omnino eleemosyna dari non debet.'

•*S.T.* 2, 2, q. 32, a. 5.

as that portion of it ' which he does not need in order to live as becomes his station.'[1] But even this description gives only a general principle. The difficulty of deciding what is superfluous for the particular individual remains. There is not, there could scarcely be, any hard and fast rule by which it might be decided that a certain income, no more, no less, is sufficient for a man to live according to his station. St. Thomas is well aware of this difficulty. There is a sense in which superfluity of income is relative, particularly when we consider that a man may have dependents to support[2] in accordance with their station. Many comforts and expenses may be added to, or subtracted from, a budget, especially a family budget, without substantially raising or lowering the general status. St. Thomas writes

> Necessarium *dupliciter* dicitur. *Uno modo* sine quo aliquid esse non potest : et de tali necessario omnino eleemosyna dari non debet. . . *Atio modo* dicitur aliquid esse necessarium sine quo non potest convenienter vita transigi secundum conditionem, et statum propriae personae, et aliarum personarum, quarum cura ei incumbit ; huiusmodi necessarii terminus non est in indivisibili constitutus : sed multis additis, non potest diiudicari esse ultra tale necessarium ; et multis subtractis, adhuc remanet unde possit convenienter aliquis vitam transigere.

It is difficult, then, to decide in practice that a certain definite amount of income is to be classed as necessary, and that anything over and above this is superfluous. That is not to say that superfluity of income is so fluid and relative that there is really no such thing. Our readers may remember a proposition condemned, for more than one reason, by Pope Innocent XI, which runs :[4]

> Vix in saecularibus invenies etiam in regibus, superfluum statui. Et ita vix aliquis tenetur ad eleemosynam quando tenetur tantum ex superfluo statui.

It may often be obvious enough that a person has superfluous income, but to determine exactly how much is superfluous will not be an easy task. We mention this practical difficulty, and St. Thomas' awareness of it, because of the reference to the obligation to distribute *all* superfluous wealth.

In certain passages St. Thomas seems clearly to teach that a man is bound to devote all his superfluous wealth to the relief

[1] Encycl. *Quad. Anno,* p. 24 (Eng. trans. C.T.S.).

[2] *S. T.* 2, 2, q. 32, a. 5 : ' Et dicto superfluum non solum respectu sui ipsius, quod est supra id quod est necessarium individuo, sed etiam respectu aliorum quorum cura sibi incumbit.

[3] Loc. cit. a. 6.

[4] Denz. n. 1162.

of the poor. The quotation[1] given by Father McNabb is the clearest example. There are many others, some of which we shall mention later. Like the Fathers, St. Thomas, in dealing with this subject, falls back frequently on the fundamental principle that the whole purpose of material goods is to serve the needs of all men.[2] Hence arises the necessity of distributing superfluous possessions. Yet, St. Thomas would admit that superfluity of goods must be paralleled by need in some form before any obligation of distribution could arise.[3] In other words, if there were no needy persons, or if part of the *superflua* of the rich sufficed to relieve the existent need, there could not be any obligation to distribute all *superflua.* But St. Thomas would deny that the hypothesis could be verified. There is always need. If one man has too much, another, inevitably, has too little. This last argument, dear to the Fathers, would hardly hold under modern economic conditions—though, indeed, the poor will always be with us.

As we have remarked earlier, St. Thomas is well aware of the practical difficulty of deciding where the line is to be drawn between the necessaries for one's state and superfluity. There are other passages in which he speaks of the obligation of giving alms out of superfluous wealth—*de superfluo.*[4] The implication might be held to be that one is not bound to give all. Oddly, or significantly, that phrase occurs in the context in which St. Thomas is treating formally of almsgiving. Elsewhere our author allows to the wealthy wide discretion in the manner of distribution.[6] Apart from a case of extreme need when there is no one else to help, there is no obligation to distribute *superflua* to this or that particular person.

Si (evidentia signa extremae necessitatis in petente) non appareant, tunc non tenetur dare pauperi petenti; quia quamvis teneatur dare superfluum

IS.T. 2, 2, q. 87. Here, however, the question of almsgiving only arises incidentally. St. Thomas is discussing in the context the existence of a precept to pay tithes.

2 Cf. op. cit., 2, 2, q. 66, a. 7. 'Res, quas aliqui superabundanter habent, ex naturali iure debentur pauperum sustentationi'—There follows a reference to the teaching of S. Ambrose.

3 This is implied in his reasoning at many points, cf. 2, 2, q. 32, a. 5; q. 66, a. 7.

4 Cf. loc. cit. *supra* ex q. 32, a. 5.

6 Somewhat similarly he would allow some discretion in estimating superfluous wealth, cf. 2, 2, q. 32, a. 5 ad 3. Discussing the conditions for a grave obligation to give alms he writes: '. . .ex parte vero dantis cum habet superflua, quae secundum statum praesentem non sunt sibi necessaria, prout probabiliter aestimari potest.' Cf. *Quodlibet,* vi, a. 12, ad 1; *Catena Aurea in Mati. Evang.* c. v.

pauperibus, non tamen tenetur omnibus dare nec huic dare ; sed tenetur distribuere secundum quod sibi visum fuerit opportunum.[1]

And again :[2]

Committitur arbitrio uniuscuiusque dispensatio propriarum rerum ut cx eis subveniat necessitatem patientibus.

In another context, dealing with the obligations of clerics, we find that St. Thomas insists upon the willingness or preparedness to give all, if that is necessary, rather than upon the actual giving : '[3]

Dare omnia sua (superflua) pauperibus cadit sub praecepto secundum animi praeparationem, ut scilicet homo sit paratus hoc facere, si necessitas immineat. Minor tamen necessitas requiritur ad superflua eroganda quam ad omnia exhibenda ; tamen hoc totum ratione universali determinari non potest, sed committitur prudentiae ut dictum est.

Moreover, it must be remembered that the economic organization in the days of St. Thomas necessarily implied that superfluous wealth was simply hoarded and withdrawn from general use—and thereby divorced from its primary purpose. There was then no possibility of the investment of capital in productive enterprises as there is to-day.

This alteration in the economic structure provides an explanation of the development of moral teaching regarding the distribution of superfluous wealth. At all events, some clear statements of St. Thomas notwithstanding, from the sixteenth century the majority of theologians, with a few notable exceptions,[4] have not held that there is an obligation to distribute all one's *superflua* for the relief of the poor.[5] Yet there is a definite continuity in the teaching, at the back of which has always stood, and still stands, the principle that the purpose of material goods is to serve the needs of all men.[6] Circumstances, ways and means have changed, but the principle remains intact. We may recall what Pope Pius XI has written:[7] 'A man's superfluous income is not left entirely to his own discretion.

[1] *Quodlibet.* viii, a. 12, c.
[2] 2, 2, q. 66, a. 7.
[3] *Quodlibet.* vi, a. 12 ad 2.
[4] Cf. Cajetan, op. cit.
[5] Cf. Vermeersch, *Th. Mor.* ii, n. 107.
[6] Cf. Broadcast of Pope Pius XII at the end of fifth year of war. Having duly stressed the right to private property the Holy Father said : 'The Christian conscience cannot accept those systems which recognize the right of property according to a completely false concept of it and which are therefore opposed to a true and healthy social order. Accordingly, where, for instance, capitalism is based on such false concepts as to arrogate to itself an unlimited right over property without any subordination to the common good, the Church has condemned it as contrary to the natural law.'
[7] *Quad. Anno,* loc. cit.

We speak of that portion of his income which he does not need in order to live as becomes his station. On the contrary, the grave obligations of charity, beneficence and liberality which rest upon the wealthy, are constantly insisted upon in telling words by Holy Scripture and the Fathers of the Church. However, the investment of superfluous income in securing favourable opportunities for employment, provided the labour employed produces results which are really useful, is to be considered, according to the teaching of the Angelic Doctor,[1] an act of real liberality, particularly appropriate to the needs of our time.'[2]

The final point of our correspondent's query may be stated thus: Is there one rule for the laity and another for clerics in regard to the distribution of superfluous wealth? And firstly, we may ask, what was St. Thomas' view of this question? There is, of course, no denying that clerics are called upon to a greater sanctity and a higher way of life than the laity. This implies for clerics a greater detachment from earthly goods, and a consequent greater readiness to help the poor and unfortunate. St. Thomas is very mindful of this higher calling of the clergy. And there is a suggestion in some passages of his works that the precept of almsgiving binds them more strictly than it does the laity.[3] But, on analysis, it seems clear that this greater strictness is derived from positive law and not from anything inherent in the nature of clerical ownership. A cleric's needs are more sharply defined and it is thus easier to determine what, in his case, are *superflua statui.* Moreover, clerics, as part of their official functions, had the duty of distribution of funds for the poor.[4]* When St. Thomas formally discusses the obligations of clerics regarding *superflua* his conclusions correspond generally to those reached in respect of the laity.

The following quotation illustrates these points. St. Thomas poses this question:[6]

> Utrum Episcopi mortaliter peccent, si bona ecclesiastica, quae procurant, pauperibus non largiantur?

The reply runs:

> Respondeo dicendum, quod aliter est dicendum de *propriis* bonis, quae Episcopi possidere possunt, et de bonis *ecclesiasticis*: nam propriorum bonorum verum dominium habent; unde ex ipsa rerum condicione non obligantur ut ea aliis conferant; sed possunt ea vel sibi retinere, vel etiam aliis pro

[*] S.T. 2, 2, q. 134.
[1] C.T.S., trans, p. 24.
[3] Cf., for instance, *Comm, in Matt.,* v.
[4] *Quodlibet.* viii, a. 12; *S.T., 2,* 2, q. 87, a. 1, a. 3.
[3] *S.T.* 2, 2, q. 185, a. 7.

libito elargiri : possunt tamen in eorum dispensatione peccare propter inordinationem affectus; per quam contingit, vel quod sibi plura conferant quam oporteat, vel aliis etiam non subveniant, secundum quod requirit debitum charitatis : non tamen tenetur ad restitutionem ; quia huiusmodi res sunt eorum dominio deputatae. Sed ecclesiasticorum bonorum sunt dispensatores vel procuratores . . . sunt autem bona ecclesiastica non solum in usus pauperum, sed etiam ad cultum divinum et necessitates ministrorum expendenda - - - si ergo distincta sint, bona, quae debent in usum Episcopi cedere ab his quae sunt pauperibus et ministris, et cultui Ecclesiae eroganda et aliquid sibi retinuerit Episcopus de his, quae sunt pauperibus eroganda, vel etiam in usum ministrorum aut in cultum divinum expendenda, non est dubium, quin contra fidem dispensationis agat, et mortaliter peccet et ad restitutionem teneatur. De his autem, quae sunt specialiter suo usui deputata, videtur esse eadem ratio quae est de bonis propriis ; ut scilicet propter immoderatum affectum et usum peccet quidem, si immoderate sibi retineat, et aliis non subveniat sicut requirit debitum charitatis : si vero non sunt praedicta bona distincta eorum distributio fidei eius committitur.

The obligations, under this head, of lesser clerics can hardly be more strict than those of bishops. But, lest there should be any doubt as to the mind of St. Thomas on the matter we have the very same principles stated by him in the body of an article dealing with the question

Utrum clerici peccent mortaliter, si ea quae eis superfluunt, in eleemosynas non largiantur ?

We have had occasion already to quote from this article, from the reply to the second objection advanced, in which St. Thomas implies that, even for clerics, it is the preparedness to give all *superflua* if need be *(si necessitas immineat)* that is of obligation. Apart, then, from some positive arrangement or special purpose of the goods held, the *obligations of* clerics regarding their *superflua* correspond, according to St. Thomas, to those of the laity.

Our teaching to-day follows the same lines. In regard to *bona beneficialia,* Canon Law demands that whatever is not necessary for the decent support of the benefice holder should be expended on behalf of the poor or pious purposes.[2] We find echoes of this law back through the centuries. It imposes a *grave* obligation, but according to the most acceptable interpretation, both before the Code and since, the obligation is not one of strict justice.[3] Leaving aside this positive law *which refers*

[1] *Quodlibet.* viii, a. 12.

[2] Can. 1473, ' Etsi beneficiarius alia bona non beneficialia habeat libere uti frui potest fructibus beneficialibus qui ad eius honestam sustentationem sint necessarii ; obligadone autem tenetur impendendi superfluos pro pauperibus aut causis *piis.* ..

[3] Cf. Prümmer, *Th. Mor.* u, 37 ; Jorio, *Th. Mor.* ii, n. 615.

to benefice holders, the strict *obligations* of clerics generally to distribute their superfluous wealth correspond with those of the laity. They are bound in charity to help cases of extreme need—and the community in grave need—even out of goods that are necessary to maintain their station and, *a fortiori,* out of *superflua statui.* They are also bound to help grave individual need and even ordinary need—occasionally at least—out of *superflua statui.*[1] Some theologians suggest that there is an obligation to expend a certain definite percentage of superfluous income in the relief of ordinary need.[2][3] And then there are the obligations of beneficence and liberality referred to by Pope Pius XI. In speaking of the obligations of clerics it may be well to note in passing, as is implied by St. Thomas, that it is more easy to determine in their case what are *superflua statui.* The way of life of clerics is more stereotyped, and they are freed from the obligation of providing for a family.

It follows, however, from what has been said, that the distribution in alms of all *superflua,* from whatsoever source derived, is for clerics, no less than for the laity, a counsel of perfection rather than an obligation. But clerics should endeavour to observe the counsels of perfection. The call to distribute all one's *superflua* to the poor is an inspiring call deep-heard in Christian tradition. The first Apostles left 'all things' to follow Christ, and He had not whereon to lay His head. Those who hear and heed this call may often seem to lack prudence as the world knows it. But, as Cardinal Wiseman somewhere said well, an error or a fall upon the side of the theological virtues is more easy than one upon the cold bare earth of human prudence. Clerics who live according to this counsel of perfection will, beyond doubt, have a great reward. The earthly largesse which they dispense will become for them heavenly treasures laid up where neither rust nor moth can consume. And the detachment from earthly things implied in this way of life will surely bring a blessing and a bountiful harvest on their labours in the vineyard of the Lord. Pope Pius XI, in his Encyclical on the Catholic Priesthood, having dealt with the dangers of greed and avarice, continues :[3] 'On the other hand, by sincere disinterestedness the priest can hope to win the hearts of all. For detachment from earthly goods, if inspired by lively faith, is always accompanied by a tender compassion

1 Cf. Prümmer, op. cit., i, n. 588 et seq.
2 Cf. St. Alphonsus *[Homo Ap.* tr. 4, n. 19) who suggests two per cent. Many theologians follow him. Others suggest more.
3 p. 33 (Eng. trans., C.T.S.).

towards the unfortunate of every kind. Thus the priest becomes a veritable father of the poor. Mindful of the touching words of his Saviour, 'As long as you did it to one of these my least brethren, you did it to me' he sees in them, and, with particular affection, venerates and loves Jesus Christ Himself.'

DAILY MASS IN RURAL CHURCHES

If a privilege exists—dating even from Penal times—of offering Mass in one's parochial house, can that privilege be used when it means depriving the people of week-day Mass and Holy Communion —especially in view of the present discipline of the Church in this matter? I shall be grateful for a reply.

Observer.

Parish priests[1] and their assistants[2] are bound to administer the sacraments to the faithful when they legitimately ask for them. The faithful are to be exhorted to receive Holy Communion frequently, even daily.[3] It is laid down in the Maynooth Statutes[4]* that Mass should be celebrated every day in towns and rural churches at a fixed hour which is convenient for the faithful—insofar as this is possible in the particular circumstances. In the light of all this, it seems obvious that the privilege of celebrating Mass in the parochial house, however long-standing the custom on which it is based, should not be so interpreted that the faithful are habitually deprived of the opportunity of assisting at Mass and of receiving Holy Communion on week-days. It is in point to remark here that, in cases of doubt, privileges which are opposed to the law in the interest of private parties are to be interpreted strictly.[6]

THE OBLIGATION OF A DIOCESAN STATUTE REGARDING THE APPLICATION OF MASSES

The text of a diocesan statute reads: 'Quod spectat oblationes die 2 Novembris factas, explicetur antea fidelibus quotannis . . . tales oblationes non esse stipendia Missarum sed eleemosynas pro defunctis; nihilominus autem sacerdotes celebraturos plures Missas pro defunctis secundum intentiones offerentium. Detractis 125 pro Missa solemni illo die celebrata, aut $15 pro cantata, oblationes sunt

1 Cf. Canon 467.
2 Canon 476, § 6.
3 Canon 863.
4 n. 274.
*Cf. Canons 50, 68.

aequaliter dividendae inter sacerdotes ecclesiae vel paroeciae. Unusquisque vero debet celebrare unam Missam pro singulis summis quinque scutatorum acceptis.

(i) Is each sum of $5 a stipend in the striet sense ?

(ii) If it is not

(a) does the obligation to celebrate such Masses arise from obedience or fidelity ?

(α) What proportion of such Masses omitted would constitute a mortal sin ?

(c) What is the time limit for the celebration of those Masses ?

The solution of these questions will be appreciated by the priests.

Anceps,

As this query has come to us from very far the other side of the Atlantic we have no opportunity of knowing what is the customary interpretation of the diocesan statute quoted. We can examine the question solely in the light of the data supplied by our correspondent. Consequently, our conclusions must be somewhat tentative. We shall set out two possible interpretations of the statute and then give our preference.

It is made quite clear to the faithful that their contributions to the November offerings are not Mass stipends. Yet it might be argued, from the explanation given to the faithful, that there is a quasi-contract between them and the priests in virtue of which the latter are bound to celebrate several Masses *secundum intentiones offerentium.* No exact number of Masses is mentioned to the faithful but the diocesan statutes intervene to determine this number precisely—or, at least, to determine an amount on the acceptance of which the priest is bound to celebrate Mass. Each priest attached to the parish or church must celebrate a Mass for every $5 accepted as his share of the collection-after the deductions mentioned have been made. It might seem, then, that what the diocesan statutes have really done is to set down $5 as the stipend for each of these Masses. If this argument be valid, the first question asked by our correspondent would have to be answered in the affirmative ; each sum of 85 would be a stipend in the strict sense—though differing in some minor details from the usual manual stipend. Strictly speaking, if the first question be answered in the affirmative, some of the subsequent questions do not arise. It is obvious that if every $5 be a stipend in the strict sense the priests are bound *sub gravi* in commutative justice to apply a Mass for each such stipend accepted. It should be noted that the obligation in justice, according to the argument given here, would not arise from the diocesan statutes taken in isolation

but from this statute as defining or making precise the extent of the obligation of the quasi-contract. But even if it be accepted that each $5 is a stipend in the strict sense, we should say, in reply to our correspondent's final question, that it suffices to discharge the corresponding Mass obligations within a year.

There is, however, another possible interpretation of the diocesan statute. It can be held that the sum of $5, as determined by this statute, is not a stipend in the strict sense. In this view, the obligation to celebrate a Mass, *secundum intentiones offerentium,* for each $5 accepted, arises from obedience to ecclesiastical law. But we would hold that there is a grave obligation in obedience to celebrate each Mass—or, in other words, that the omission of even one Mass is a mortal sin. In reply to the final question we would say here again that the time within which the obligations must be discharged is a year.

We believe that this second interpretation is not merely solidly probable but that, all things considered, it is by far the better view. Firstly, it is set out expressly in the diocesan statute that the offerings are not Mass stipends and that this is to be explained beforehand each year to the faithful. If the offerings are not stipends when they leave the hands of the faithful, the subsequent intervention of the diocesan authorities cannot change their nature and make stipends of them or of any part of them. In reply to the argument that there is a quasi-contract between the faithful and the priests in virtue of which the latter undertake to celebrate several Masses for the donor's intentions, it can be said that the statement that these Masses will be celebrated is no more, and is understood to be no more, than a gratuitous promise. It certainly is not a contract that gives rise to obligations in strict justice. Moreover, the indefiniteness of the phrase *plures Missae* would ill-accord with an obligation in commutative justice. How many Masses are covered by the term *plures Missae ?* Possibly three Masses would meet its meaning. It may, indeed, be said that there is an obligation in fidelity, as well as in obedience to law, to say the *plures Missae.* But an obligation in fidelity would not add very much to the obligation of obedience to law *which we* hold to be grave in regard to each Mass.

Briefly, then, it is our opinion that the offerings made by the faithful, as alms for the dead, are simply part of the parochial or church revenue. The diocesan statute appoints a certain division of these offerings and places on every priest who shares in the division a grave obligation in obedience to celebrate a Mass *secundum intentiones offerentium,* for each $5 accepted.

ACCEPTANCE OF EXTRAORDINARY COLLECTION

'Sacerdos' in contravention of the Maynooth Statute 426, during the Great War, accepts an extraordinary collection made up by the people owing to the rise in the cost of living. He accepted, either through inadvertence or want of knowledge of the law. What is the punishment? And what is his obligation?

Sacerdos.

Our correspondent refers to Decree n. 426 of the Maynooth Synod of 1927. This decree repeats, almost verbatim, a provision of the Synod of 1900 which was the law in force at the period to which reference is made in the query. Decree n. 211 of the Maynooth Synod of 1900 says :

Stricte prohibemus sub poena suspensionis ne quis sacerdos extraordinariam pecuniae collectam, aut aliquid aequivalens, a populo oblatam, sine scripta Episcopi licentia, quovis praetextu accipiat.

That the prohibition is a grave one is clear from the wording of the law and from the fact that a censure is attached to its violation.[1] The action of 'Sacerdos' was, therefore, objectively at least, a grave sin and rendered him liable to suspension by his Ordinary. The censure is *ferendae sententiae.* Apparently no steps were taken by the Ordinary in regard to the censure. So 'Sacerdos' need not worry on this score.

It is often difficult to say with certainty whether a person is guilty of grave subjective sin—even when the objective violation is certainly grave. 'Sacerdos' invokes inadvertence and lack of knowledge as excusing causes. We would not easily admit that this ignorance or inadvertence on his part in regard to what is a serious law, is inculpable so as to excuse him from grave subjective guilt. A priest is reasonably expected to know thoroughly laws like that in question here. The prohibition of the law is serious ; there is a censure attached ; the matter governed by the law is practical and the law is clear and easily understood. Ignorance and inadvertence, though actual, are often voluntary in cause and therefore culpable.[2] The presumption is that 'Sacerdos' was culpably unaware of his grave obligations and was guilty of grave subjective sin. This presumption, like all presumptions, will yield to contrary fact or proof.

The decree we are discussing states that it is gravely unlawful

[1] Cf. Decree, n. 525, Maynooth Synod, 1900.
[2] Cf. Pnimmer, *Th. Mor.*, i., n.45 et seq.

for a priest to accept an extraordinary collection without the written permission of the Bishop. It does not invalidate the donation or acceptance. 'Sacerdos,' therefore, is not bound to restore the money he has accepted.[1]

ACCEPTANCE OF EXTRAORDINARY COLLECTION

I have followed with interest your reply to 'Sacerdos,' regarding the acceptance of an extraordinary collection.

You say that as the Bishop took no action there is no censure and there is no restitution. It could happen that the Bishop was unaware of the fact, and as a long time has elapsed there may be a change of Ordinary. The case would still seem unsettled. Should the Ordinary be advised ?

Querist.

In our previous reply we stated that the priest who accepted, on any pretext, an extraordinary collection, without the written permission of his Bishop, committed, what is, objectively at least, a grave sin and rendered himself liable to suspension. But as this censure is *ferendae sententiae* it was not contracted unless the Bishop inflicted it. This, apparently, he did not do in the case submitted—for some good reason which we do not know. It may be that he was unaware of the violation of the Statute. The guilty priest was not bound to inform[3] the then Bishop of the violation—nor is there any obligation to inform his successor. The Statute[4] gravely forbids the acceptance by a priest of an extraordinary collection without the due permission. It does not void the acceptance—hence no obligation to make restitution arises from the Statute.

[1] The collection may not be accepted whether it be in money or in some equivalent form. Cf. *supra.*

[2] We are presuming that the Bishop took no action in the matter. He might demand, under penalty, that the money be returned.

[3] Even in a judicial process the parties are not bound to answer legitimate questions—if answering would convict them of their own crime. Can. 1743, § 1 reads : 'Iudici legitime interroganti partes respondere tenentur et fateri veritatem, nisi agatur de delicto ab ipsis commisso.'

[4] Maynooth Synod (1900), n. 211 ; (1927), n. 426.

OBLIGATION OF PARISH PRIEST WHO ACCEPTS MONEY TO COVER FUNERAL EXPENSES OF PARISHIONER

A man living alone makes an arrangement with his parish priest for his burial. For this purpose the priest has been given a sum of money to cover funeral expenses. No official receipt was handed over, and the man is anxious to know what are the obligations of the parish priest in this matter, and whether a record is kept of the transaction which would provide for the fulfilment of the arrangement in the event of the prior decease of the parish priest or of his transfer to another parish ? A reply would be much appreciated by

Querist.

It is obvious that the parish priest is bound by the natural law, in virtue of the contract, to set apart, for the purpose indicated, a sum of money equivalent to that received from the depositor. And if the latter were to demand his money back at any time, the parish priest normally would be obliged to accede to that demand. If the money has not been given back, the parish priest is bound, on the death of the depositor, to use the money to fulfil the specified arrangement. Moreover, the parish priest must take all reasonable precautions to ensure that the money will duly be available for the purpose appointed by the depositor. This implies that the parish priest is bound to make provision for the eventualities mentioned in the query—his own prior death, or his transference to another parish. He must, therefore, keep a record of the transaction, in which the sum entrusted to his care, and its purpose, are clearly indicated, so that, in the event of his prior death, the executor or administrator may not be unaware of this special charge on the property under the control of the deceased,[1] and may be able to arrange for the return of the money to the depositor, or for the fulfilment of the arrangement made, if the depositor should die during the period of executorship or administration. If the parish priest is transferred to another parish he may adopt one of several possible courses of action in regard to the money deposited with him. He might, with the consent of the depositor, retain the money with the obligations attached, in accordance with the original arrangement. Or he might return the money

1 The depositor is a proprietory creditor and his money on deposit is a first charge on the property of the deceased. ' Primo loco satisfaciendum est creditoribus proprietariis. . . . Ergo ante omnia alia debita restituendae sunt res furtivae, depositae,' etc. Noldin, *Th. Mor., De Praeceptis,* n. 506, cf. ibid. n. 507.

to the depositor. Presumably he was selected in the first instance because he was the *parochus proprius* of the depositor. Accordingly, he might, if the depositor did not object, hand the money on to his successor, with an explanation of the arrangement, if the latter is willing to assume responsibility in the matter. It is fair to presume that the sum in question constitutes grave matter. The obligations of the parish priest in this connection are, therefore, grave, and they are contained implicitly in the natural law governing the contract in question.

The *Maynooth Statutes* contain special regulations which are relevant to the matter under discussion. By these statutes a priest is forbidden to accept the custody of money. He should never retain in his possession, or even allow to be deposited in his possession, money belonging to the poor or to others. If, however, a priest considers that it is a work of charity to assist poorer or less educated people in the disposal of their savings, he should not retain their money in his own possession, even when it is offered to him spontaneously, but should see that it is deposited in a bank. The deposit receipt should then have three names inscribed, the owner's, the priest's and that of some third party.[1] These provisions are intended to safeguard the interests of the owner. If a priest retains in his possession money belonging to others, there is a danger, especially on the death of a priest, of its being confused with his personal property, or with ecclesiastical property. The statutes quoted impose an obligation in conscience on the priest. This is clear from the words used : *vetamus, prohibemus.* The obligation is grave or light *pro ratione materiae.*[2]

THE PRIVILEGE OF MENTAL RECITATION OF THE DIVINE OFFICE

It is said that the privilege of mental recitation of the divine office was granted to the Franciscans by Pope Leo X, and that all priests who are members of the Third Order can *enjoy* this privilege. In the United States of America, and in Australia, etc., sometimes Bishops

[1] *Maynooth Statutes,* n. 51 : ' Vetamus ne qui sacerdos pecunias in custodiam unquain accipiat ; nunquam igitur nummos pauperum aut aliorum penes se retineat vel etiam deponi permittat : n. 52 : Quod si sacerdos opus caritatis esse ducat rudiores aut pauperiores in disponendo de suis bonis parsimonia collectis adiuvare, prohibemus ne pecunias eorum, etiam sponte ab iis oblatas, apud se retineat; curet vero ut apud aerarium (Bank) eae deponantur, addito in depositi documento non solum sui ipsius nomine, sed etiam tertio nomine.'

[2] Cf. *Maynooth Statutes,* n. 6.

and priests have to travel four or five hundred miles to fulfil their duties, e.g., to administer Confirmation, to dedicate a church, to be present at a silver or golden jubilee of a priest or nun who has worked faithfully for the Master.

If two priests and a Bishop are in an automobile, two of whom are members of the Third Order of St. Francis, but only one of the three is a competent driver and has to drive three hundred miles or more—would the driver fulfil his obligation of the office by listening to the other two reciting the office aloud? The driver can only answer the Pater, Ave and Gloria. If the answer is favourable, what would the position be if none of them belonged to the Third Order?

Exile of Erin.

The divine office is, by its nature, a public prayer. It must, therefore, be recited orally. That is to say the words of the office must be formed consciously with the tongue and lips. This holds even for private recitation.[1] To put it the other way round: the merely mental recitation of the canonical hours—that is the reading over them with the eyes, without forming the words—does not, except in virtue of a special privilege, discharge the obligation of the divine office.

As our correspondent from the antipodes remarks, it is commonly maintained that Pope Leo X granted the Friars Minor the privilege of satisfying the obligation of the divine office by merely mental recitation, and that this privilege, like others in pre-code days, was communicated to all regulars. By virtue of a grant made by Pope Pius X in 1909 there is a general communication of privileges between the members of the three orders of St. Francis. Thus it would follow that members of the Third Order, who are in major orders, could use the privilege of mental recitation of the divine office—if Pope Leo's original grant is still in force. St. Alphonsus writes:[2]

Leo X concessit regularibus privilegium recitandi Officium privatum mentaliter.

Some theologians contend that this privilege was withdrawn afterwards by Pope Gregory XV and by Pope Urban VIII. Some again say that the privilege only extended to those parts of the choral office—and of the Mass—which are recited secretly. St. Alphonsus records these opposing views and concludes:[3]

Ergo, recte arguunt Salmanticenses, recitatio privata, ubi nihil dicitur ut ab aliis intelligatur, potest ex hoc privilegio tota mentaliter fieri.

1 Cf. Genicot, *Th. Mor.*, ii, n. 57.
2 *Theol. Mor.*, l. iv, c. 1, n. 63.
3 Loc. cit.

Prümmer[1] remarks that, in view of the authority of St. Alphonsus, whose opinion may be followed in practice by a confessor, he would not dare to hold that a regular who recites the whole office mentally is guilty of grave sin. By relying entirely on the extrinsic argument, based on the authority of St. Alphonsus, Prümmer seems to imply that the present position in regard to the privilege must be regarded, on intrinsic grounds, as, at the least, very doubtful. Noldin[2] states categorically that the privilege granted by Pope Leo X was withdrawn by Pope Gregory XV. It is true that Pope Gregory did recall privileges granted *vivae vocis oraculo*—but it is not clear that the recall extended to privileges thus granted before the pontificate of Pope Pius V. Many other authorities might be cited both for and against the present validity of the privilege. Further citation, however, will serve no useful purpose as, in the last resort, the position will have to be regarded as doubtful—but the conclusion of Coronata seems reasonable. He writes

> Privilegium a Leone X fratribus minoribus concessum officium divinum privatim mentaliter recitandi probabiliter adhuc viget et adhiberi a regularibus potest.

Once a privilege has been granted, it may be availed of, until its recall is clearly indicated.

But whether or not the privilege in question may be availed of, by regulars and others, to-day seems ultimately to matter very little in solving the particular case proposed by our correspondent. We are not told that the driver of the car is one of the two tertiaries. We presume, for the moment, that he is, since, otherwise, there could be no question of his using the privilege of mental recitation of the divine office. The fact that the others are, or are not, tertiaries makes no difference in the solution. The driver, apparently, cannot repeat, with one of the others, the alternate antiphons and verses of the psalms as required for choral or quasi-choral[4] recitation. If he could, needless to say, apart from any privilege, he, like the others, would discharge his obligation.[5] But for the most part, he can

[1] *Th. Mor.*, ii, n. 374.
[2] *Th. Mor., De Praeceptis*, n. 765, where the privilege is restricted as applying only to the parts of the choir office which are said secretly, 'Privilegium, quod regularibus a Leone X concessum est, officium divinum in choro quoad partes quae secreto dicuntur mentaliter sine prolatione verborum recitandi a *Gregorio* XV, per bullam *Romanus Pontifex*, iterum revocatum est.' Prümmer, loc. cit., seems to suggest a similar restriction.
[3] *Institutiones Juris Canonici*, i, n. 617.
[4] We use the term 'quasi-choral recitation to cover what is called in Latin *recitatio cum socio*.
[5] Cf. Noldin, op. cit., n. 766; Genicot, loc. cit.

merely listen to the others. And merely listening to the others is not equivalent even to mental recitation. We think, then, that the driver does not discharge the obligation of the divine office by merely listening to its quasi-choral recitation by the others. And this conclusion holds even if, as we presumed, the driver is a tertiary. We may add, however, that, in circumstances, such as those given by our correspondent, the driver of the car may well be excused legitimately, by reason of fatigue, from the obligation of the divine office.[1] Or the Bishop could grant him a dispensation.

SUBSTITUTION OF OFFICE OF DEVOTION FOR PRESCRIBED OFFICE

May a priest, for the sake of greater devotion, recite once a month *aliud officium pro officio diei* ?

Reader.

The theologians are generally agreed that it is gravely sinful deliberately to substitute for the office of the day another office which is notably shorter and notably different in quality.[1] Pope Alexander VII condemned the following proposition[3]: 'In die Palmarum recitans Officium paschale satisfacit praecepto.' And when this grave precept is not discharged, there is a mortal sin of omission. In the substitution contemplated in the condemned proposition there is, indeed, a double deordination. The Paschal Office is notably shorter than, and notably differs in quality from, the Office of Palm Sunday. It is commonly held that it is not gravely wrong to substitute for the office of the day, as prescribed in the Calendar, another office of equal, or of nearly equal, length and quality—if such substitution is made rarely. St. Alphonsus[4] quotes Suarez, Laymann and others as holding that the offence is only venial, even if the substitution is made frequently. Their argument is that quantity is the primary and substantial consideration in assigning an office to a particular day, and that the quality is only a secondary and accidental factor. St. Alphonsus regards this view as probable, though he himself adopts the stricter and more common opinion which he describes as 'sententia aequior.'

[1] Ibid. 780; Prümmer, op. cil., n. 379.
[2] Cf. Noldin, *De Praeceptis,* n. 7G2; Prümmer, *Th. Mor.,* ii, n. 370.
[3] Dcnz, n. 1134.
[4] *Th. Mor.,* l. iv, n. 161, 30.

To substitute for the prescribed office another of similar quantity and quality is venially sinful unless there is a reasonable justifying cause—in which case there is no sin at all. It is an accepted principle of excusation that a reasonable cause will free one from a light obligation. The fact that the prescribed office is not in the priest's breviary, and is not easily available, is obviously a reasonable cause for the substitution just mentioned. Is special devotion also a reasonable cause in this context? Most theologians seem to answer this question in the negative. They do not list special devotion as a reasonable cause.[1] Moreover, they recall a decree issued in 1666 by the Congregation of Rites. The decree runs thus:[2] "Non est relinquendum Officium Breviarii pro Officio devotionis.' St. Alphonsus, however, writes:[3]

> Venialiter vero (peccat) qui mutat (Officium) raro, puta ter vel quater in anno: modo mutatio non fiat in Officium notabiliter brevius atque sine causa. Nam ex aliqua rationabili causa nempe studii . . . magnae defatigationis vel specialis devotionis erga aliquem sanctum nec etiam erit veniale.

Genicot[4] repeats this teaching. In the probable view of Suarez, Laymann, etc. (a view mentioned earlier), more frequent substitution of one office for another (out of devotion) would be allowable, if this special devotion is regarded as a reasonable cause. St. Alphonsus does regard it as a reasonable cause, at least for rare substitution. We cannot see that it becomes unreasonable if the substitution is slightly more frequent.

In the light of the foregoing summary of the relevant teaching, we think that it can be held, as a probable opinion, that a priest may, for the sake of devotion, recite once a month 'aliud officium pro officio diei." At the same time we must add that we prefer the view which would not regard special devotion as a reasonable cause for omitting, even rarely, the prescribed office in favour of another. To us this substitution seems really to imply an objectively wrong notion of devotion.

[1] Cf. Aertnys-Damen, *Th. Mor.*, i, n. 114; Noldin, loc. cit. St. Alphonsus in his *Homo Apostolicus,* app. iii, n. 70, does not mention special devotion.

[2] *Dec. Auth. Cong. Sac. Rit.,* n. 1334. Reference is also made to a reply given in 1899 by the Congregation of Rites. The question asked was: 'An satisfaciat obligationi suae clericus in ordinibus sacris constitutus, qui sponte vel invitatus se adjungit clero Officium ab Officio ipsius clerici diversum canenti vel recitanti? The reply was: 'Generaliter negative.'—*Dec. Auth.,* n. 4011.

[3] *Th. Mor.,* loc. cit.

[4] *Th. Mor.,* ii, n. 52.

DEVOLUTION BY PASTOR OF OBLIGATION TO GIVE CATECHETICAL INSTRUCTION

A convention of religious teachers (Sisters and Brothers) was held some time ago in the United States. Some of those present advocated that teaching of Catechism in the parish schools should be done entirely by the Sisters or Brothers, and not by the Pastor or by his assistant priests. It was said that the priests of the parish had plenty of other work to occupy their time. My personal opinion is that it is true that some priests may be very successful pastors but poor teachers. But, at the same time, the priest, in view of, or as a result of his training in philosophy, theology and liturgy, etc., is in a better position than the Sisters or Brothers to teach religion, or at least to explain it a couple of times a week in the class-room.

May the pastor lawfully and prudently leave the teaching of religion entirely in the hands of the Sisters or Brothers who teach in the schools of the parish ?

'A Voice in the Wilderness.'

Pastors and others who have the care of souls are, by virtue of their office, bound by very grave obligations to ensure that their people are properly instructed in religious doctrine.[1] To some extent at least, these obligations must be discharged personally. Our correspondent's query refers only to the catechetical instruction of the young. In a covering letter he mentions some of the special difficulties which, in parts of the United States, may impede the pastor and his assistant priests from personally discharging their duty by giving religious instruction in the schools. It is easy to realize that very often it will not be possible, in fact, it will rarely be possible for the priests of a parish to do the routine teaching of religion in the various classes of the parochial schools. By routine teaching of religion we mean that day-to-day systematic religious instruction which should form part of the curriculum of the Catholic school[2]—for religious knowledge must advance, *pari passu,* with secular knowledge. It is obvious that the parish priest may avail himself of duly instructed teachers to impart religious knowledge in the elementary schools.[3] And while properly equipped lay teachers may be entrusted with this important

[1] Canon 1329, 'Proprium ac gravissimum officium pastorum praesertim animarum est catechcticam populi christiani institutionem curare.'

[2] Canon 1373, § 1, 'In qualibet elementaria schola, pueris pro eorum aetate tradenda est institutio religiosa.'

[3] Canon 1333, § 1, 'Parochus in religiosa puerorum institutione potest, imo, si legitime sit impeditus, debet operam adhibere clericorum, in paroeciae territorio degentium, aut etiam, si necessc est, piorum laicorum. . . .'

work and may, as is so often the case, do it well, the pastor who has efficient religious teachers may account himself particularly fortunate. At the same time, in our opinion, the pastor—if it be possible for him to do otherwise—may not leave the catechetical instruction of children, even in elementary schools, entirely in the hands of teachers—though they are religious. The pastor holds, of course, a kind of watching brief on behalf of the Ordinary. But in addition to that, as often as the particular circumstances permit, he should, personally or through his assistant priests, visit the schools of the parish and give the children instruction on some points of Christian doctrine. It may be, as is suggested in the query, and in fact it could hardly be otherwise, that every priest is not a pedagogical expert, nevertheless we think that an instruction given by the priest may have a special value in contradistinction to, or rather complementary to, the regular instruction by the teacher. The priest can, in a sense, take the instruction out of its classroom environment, and in the vast majority of cases, can invest it with a fresh interest and give it an added quality of sacredness. Religious instruction given by the teacher inevitably tends to be regarded by the children as another task ; given by the priest it seems somehow different ; it gets a wider and a deeper meaning. We feel sure that the majority of Catholic teachers would endorse these remarks and that they would be very happy to have the priest to complement their teaching of religion to the children.

Thus, speaking generally and in the light of what will usually be feasible, it seems to us that both the priests of the parish and the teacher, secular or religious, should play a part in the teaching of religion in the elementary schools. The local Ordinary, or particular law, can best give a ruling, in concrete circumstances, as to what part each group is to play, in other words, as to the division of labour, in order to ensure that the children in the elementary schools are given adequate religious teaching. Most of the spade work will *fall to the lot of the* teacher. The religious instruction of those attending the intermediate or higher schools should be in the hands of priests who are noted for their zeal and learning. It is the duty *of the local* Ordinary to ensure that this is so.[1] Our correspondent, whose frequent letters and whose *noms de guerre* oftentimes are so instinct with nostalgic love and affection for Ireland, will be

[1] Canon 1373, § 2, 'Juventus, quae medias vel superiores scholas frequentat, pleniore religionis doctrina excolatur, et locorum Ordinarii curent ut id fiat per sacerdotes zelo et doctrina praestantes.'

interested to know the regulations laid down by the plenary Synod of Maynooth in regard to catechetical instruction in elementary schools. We quote the relevant statutes :

Iuxta morem iam receptum catechismus, sicut ceterae disciplinae scholares, singulis diebus ab institutoribus doceatur.[1] Parochus et vicarii, distributis inter se scholis, visitent scholam unamquamque in paroecia singulis hebdomadis, ibique institutionem religiosam continuo et methodice tradant.[2]

To conclude on a note that is not merely national, we would recall the decree issued by the Sacred Congregation of the Council in 1935, in which the duties of Ordinaries, pastors and parents in regard to cathechetical instruction are detailed and stressed.[3] The following extract comes close to the point of our correspondent's query. 'Especially in places where the scarcity of priests makes it impossible for the priests themselves to teach Christian doctrine sufficiently, the Ordinaries shall do their best to provide suitable catechists of both sexes to aid the pastors by teaching catechism in the parochial or public schools and even in remote parts of the parish.'[4]

THE MORAL OBLIGATION OF THE 'MAYNOOTH STATUTES' REGARDING CATECHETICAL INSTRUCTION IN THE SCHOOLS. MISSIONS AND COLLECTIONS ON THE OCCASION OF MISSIONS

(1) According to n. 364 of the Maynooth Statutes a parish priest is bound, *per se vel per vicarios*, to visit, as far as possible, all the schools in his parish every week and to give an instruction in Christian doctrine to the children. If a priest neglects to observe this Statute is he guilty of sin ?

(2) There is a custom in this country on the occasion of a mission or public retreat in a parish to collect more money than is required to defray the expenses of the mission. Is not this forbidden by the Maynooth Statutes ? Is it forbidden under pain of sin ?

(3) How often is a parish priest bound in conscience to have a mission in his parish ?

Sacerdos.

(1) As our correspondent points out, it is laid down in n. 364 of the Maynooth Statutes that parish priests are bound to teach and explain the catechism in their schools every week. Parish

[1] n. 393, §2.
[2] n. 394.
[3] Cf. *A.A.S.*, vol. xxvii, pp. 145-154.
[4] Translation is Bouscaren's, *Canon Law Digest*, ii, pp. 177-178.

priests may discharge this duty *per se vel per vicarios.* The instruction given by the priests is additional to that given daily by the teachers. It must be continuous and methodic instruction in accordance with a system to be approved by the Bishop. This statute is found in the section[1] dealing with catechetical instruction. In a later section,[2] *De Scholis Primariis,* the obligation of priests to visit, and to give religious instruction in, the schools of their parish is even more clearly stated. In statute 394 we read :

> Parochus et vicarii, distributis inter se scholis, visitent scholam unamquamque in paroecia singulis hebdomadis, ibique institutionem religiosam continuo et methodice tradant.

We are asked if these statutes bind under pain of sin ? The answer is in the affirmative. The wording of the law, in particular the form of the verb, indicates that there is an obligation in conscience—an obligation which is grave *pro ratione materiae.*[3] If we are further asked—and the question follows naturally—what would be considered grave matter under those statutes, it can be said in reply that an indication is given in a subsequent law. Statute 395 says that any priest who, for four continuous weeks, shall have neglected to visit the schools entrusted to his care, or to give the appropriate instruction in them, is to be punished by suitable penalties as determined by his Bishop. This statute clearly indicates that failure to observe the law under consideration for a period of four weeks is a grave dereliction of duty. It is a principle of juristic interpretation—a principle expressly laid down in the introductory statutes[4]—that laws which bind under pain of censure impose a grave obligation. This principle applies whether the censures are *latae* or *ferendae sententiae.*

(2) The Maynooth Statutes[5] forbid, on the occasion of missions or retreats, the holding of any collections, even for the building or decoration of the church, or for the promotion of other pious works. On these occasions the faithful may be asked only for what is necessary to defray the expenses of the pious exercises. The manner of obtaining this amount is to be approved by the Bishop—to whom must be submitted an account

[1] *Titulus* xxxiii.
[2] *Titulus* xxxviii.
[3] Cf. *Maynooth Statutes,* n. 6 (3) : 'Décréta in quibus adhibentur verba - - - in modo imperativo, etiamsi mandatum non aliter significetur, pro ratione materiae obligationem in conscientia imponunt.'
[4] n. 6 (1) : 'Statuta quae aliquid prohibent sub censura, sive latae sive ferendae sententiae, sub gravi obligant.'
[5] n. 376.

of the sum collected and of the expenses incurred. The Bishop decides also what is to be done with any surplus left over after the expenses have been paid. Our correspondent says there is in this country a custom whereby more money is collected than is necessary to defray the expenses. It may be that this custom originated in an arrangement of the Bishops or that it has their approval and that they have decided that the surplus may be used for parochial purposes. Otherwise, the custom is *contra legem.* This custom, however, is not reprobated in the law and, consequently, if it is centenary or immemorial, it may be tolerated, provided the Ordinaries consider that, in view of the circumstances of place and person, it may not prudently be removed. If the custom is contrary to the law and is not centenary or immemorial, it must be suppressed.[1] The purpose of this statute, which restricts collections on the occasion of missions, is to prevent the harm and scandal which would result from the suspicion that the pious exercises were being organized for gain. The statute binds in conscience. This is clear from the wording of the law: 'praecipimus ut nullae collectae . . . fiant.' These are the operative words. The word 'praecipimus' expresses a formal precept. Violation of the law will again be grave or light *pro ratione materiae.*[2]

(3) A parish priest is bound in conscience to have a mission for his people at least every five years. This is laid down clearly in statute 375. Here also the word 'praecipimus,' expressing a formal precept, is used.

THE USE OF THE TERM 'ROMAN CATHOLIC'

Would you tell us what is the official attitude of the Church to the use of the term 'Roman Catholic'? It is insisted here in the Six Counties by state officials and others that our proper religious description is Roman Catholic—that the Church of Ireland is as 'Catholic' as we are. This Church resents being called non-Catholic. Our Catholic people, even priests, use the words 'Roman Catholic.' An authoritative direction is much needed and would be appreciated.

P. P.

From the official standpoint of the Church there is nothing objectionable—apart from the circumstances of a particular

[1] Cf. Canon 5, *Maynooth Statutes,* n. 4.

[2] Cf. *Maynooth Statutes,* n. 6 (2): 'Quando formale praeceptum exprimitur per verba "iubemus," "prohibemus," et alia huiusmodi, hoc graviter aut leviter, pro ratione materiae, in conscientia obligare censendum est.'

false interpretation—in the term Roman Catholic. The term can have a perfectly orthodox theological meaning and has been used (not alone, but with other qualifications) by the Church in some public documents and statements. In the Profession of Faith, formerly used in the ceremony of reconciling a convert, there are several references to the Holy, Catholic and Apostolic Roman Church—as descriptive of the Church Universal. 'Knowing that no one can be saved without that faith which the Holy, Catholic and Apostolic Roman Church holds, believes and teaches - - - I profess that I believe the Holy, Catholic, Apostolic Roman Church to be the one and only true Church, established on earth by Jesus Christ. - - - I detest and abjure every error, heresy and sect opposed to the said Holy, Catholic and Apostolic Roman Church,'[1] In the *Schema de Ecclesia Christi* distributed to the Fathers of the Vatican Council on 21st January, 1870, we read this canon'[2]:

Si quis dixerit veram Christi Ecclesiam, extra quam nemo salvus esse potest, aliam esse praeter Unam Sanctam Catholicam et Apostolicam Romanam, anathema sit.

The true meaning of the term 'Roman Catholic' is a member of the one true Church founded by Christ which is united to the Pope, Christ's Vicar on earth, the successor of St. Peter, and Bishop of Rome. Briefly then the addition of the qualification 'Roman' signifies and proclaims the subjection and loyalty of Catholics to the Roman See. Thus understood, 'Roman Catholic' is a term of which we may justly be proud. Nearly fifteen centuries ago the Patristic writers of North Africa claimed that to be Roman is to be Catholic, and to be Catholic is to be Roman.

Unfortunately, the term Roman Catholic was, and is, used in England in a restrictive[3] and incorrect sense. Apparently this misuse is current, too, in Northern Ireland. The term is used to imply that Roman Catholicism is simply one branch of the Universal Church. It is a commonly held thesis of Anglican theology that the true Catholic Church comprises three branches: the Roman Catholic Church, the Anglo-Catholic Church and the Greek Catholic Church. This restricted meaning of the term 'Roman Catholic' goes back to the sixteenth

[1] *Collectio ex Rituali Romano,* Gill and Son (1938), pp. 56-9.

[2] Mansi, SS. *Cone. Coll.,* v. Ii, c. 5*11. Of course the contents of this *Schema* were not defined.

[3] If used in a restrictive sense the term 'Roman Catholic' is really contradictory and nonsensical.

century in England.[1] The Protestant theologians resented the monopoly of the term 'Catholic' by the followers of the Pope to whom it would not be conceded without qualification. For the Protestants, too, claimed to be Catholic[1] and the unlovely term 'Protestant Catholic' was not unknown. 'Roman Catholic' was regarded as a less offensive descriptive reference than 'Papist' or 'Romish.' Hence, according to the Oxford Dictionary,[3] it was used for conciliatory reasons in the negotiations connected with the Spanish Match (1618-24). Afterwards it came to be used generally—though by no means exclusively[4]—in public documents as the legal and official designation of members of the Catholic Church. At some periods the Catholics[5]* seem to have acquiesced in this usage—perhaps to conciliate, for particular reasons, the ruling powers. But on many occasions—some of which are recent—this usage became an issue between the Catholic ecclesiastical authorities and State officials. The Catholic authorities pointed out their unwillingness to accept the erroneous and, indeed, heretical implication of the term 'Roman Catholic' as used by Protestants. The Catholic Church is not merely a branch of the true Church. It is the one and only true Church founded by this Christ. Catholics can never accept any whittling down of this fundamental truth.

Our correspondent asks for an authoritative direction for the priests and people of Northern Ireland. It is not within our competence to give any such direction. But it may not be out of place to quote, at some length, the advice given by Cardinal Vaughan to English Catholics in 1901, just after the term 'Roman Catholic' had been an issue in the matter of presenting an address of loyalty to the King. Having referred to the two meanings—one false, the other true—which can be given to the description 'Roman Catholic,' the Cardinal continued[6] 'I would now say to you all: use the term "Roman Catholic." Claim it: defend it: be proud of it; but in the true and Catholic sense. . . . But I would also say: like your English forefathers and your brethren on the Continent call yourselves habitually—and especially when the word "Roman" is misunderstood—

[1] Cf. Thurston, Articles in *Catholic Encylopaedia,* sub. w., 'Catholic' and 'Roman Catholic.'

* Cf. Newman, *Essays, Critical and Historical,* vol. ii, Essay x, 'The Catholicity of the Anglican Church.' Our correspondent refers to the claim of the Church of Ireland to be 'Catholic.' This claim is passing strange.

[3] Vol. viii, p. 766.

[4] We have, for instance, terms like 'Catholic Emancipation.'

[5] Even in Ireland, cf. Thurston, loc. cit.

[6] Cf. Snead-Cox, *Life of Cardinal Vaughan,* ii, pp. 232-6.

simply Catholics, members of the Catholic Church. . . . Always ask for the " Catholic Church," address your letters to the " Catholic Presbytery," speak of the " Catholic Priest," the " Catholic Bishop." Stand on the old way, hold to the old name : everyone understands it. Why use two words when one will do ? In dedications, presentations and addresses of a formal and ceremonious kind, call yourselves " Catholics " or " Roman Catholics," whichever you please. But if you use the latter term, let it be seen that you use it in the Catholic and true sense, and that you have not chosen a word of double meaning for the purpose of equivocation. Indeed, it is important in this country that we should call ourselves " Catholics " rather than " Roman Catholics," because a false meaning is more often attached to the latter term than to the former. . . . Of course, for legal purposes and to secure for ourselves a distinctive appellation which no-one else will dare to appropriate, the term " Roman Catholic " is perfect. It is theologically correct and absolutely exclusive.'

ADVERTISING FOR MEMBERS OF PIOUS SOCIETIES

Is it lawful for religious societies to publish notices in the papers (or advertise) encouraging people to enroll themselves, and their living and deceased relatives, as members—that they may have the benefit of so many Masses (e.g., 500 daily) when the people do not fully understand the exact meaning of such advertisements ?

Mavourneen.

If ' Mavourneen ' had sent us a copy of the particular type of notice or advertisement he has in mind, it would be much less difficult for us to reply to his query. As it is, in the absence of this copy, we can only speak very generally and hypothetically. If the advertisement implies, or is intended to imply, for the ordinary people, that, when they pay a subscription and are enrolled as members of the society in question, so many *daily Masses* are offered specially for them[1]—while, in fact, they are only remembered at these Masses, offered for some other purpose—then, obviously, the advertisement is unlawful and unjust. It would really be, in these circumstances, a means of obtaining subscriptions, and members, for the society under false pretences.

[1] That is to say that the ' fructus ministerialis—ex determinata *tacerdnhim intentione* '—*is* applied for their intentions. Cf. Cappello. *De Sac.,* i. n. *581).*

But if the tenor of the advertisement is perfectly clear for the general body, we would not condemn it, under this head, even though some few are deceived by it. On the whole, however, such advertisements, unless they are very carefully controlled, are liable to lead to abuse and scandal, and do not, to our mind, seem altogether in keeping with the dignity due to the Sacrifice of the Mass. These, doubtless, were the considerations which led to two important regulations in our national law. And though 'Mavourneen' writes from a territory in which this law does not run, he will be interested to know the regulations. They are:

Ad scandalum grave fidelium praecavendum, sollicitationem stipendiorum Missarum in ephemeridibus vel foliis publicis stricte prohibemus;[1] Nemini licet sive clerico sive laico stipem petere pro quolibet pio aut ecclesiastico instituto vel fine in foliis publicis, nisi Episcopus proprius approbaverit tum petitionem, tum formam ejus impressam. Haec approbatio in ipsa petitione includi debet.

CARD DRIVES IN AID OF CHURCH FUNDS

Our provincial Press is, as I write, literally 'plastered' with announcements of '25' drives, '45' drives, whist drives, etc.—all for church funds. The writer is prompted to ask the question: How is the motive of charity, with its concomitant supernatural reward, preserved for the faithful, when those who have the *cura animarum* resort to such showman methods of obtaining funds?

I refer to the proposed functions in our bigger and better parishes—parishes in which the faithful are, in the main, well-to-do, and could, therefore, afford direct contributions, thus preserving the motive of charity. The writer has seen some of these 'drives' in the running, and has found that a large number of the players were working people, whilst our well-to-do parishioners excused themselves on the plea that 'they don't play cards.' Yes, and I have seen these 'drives' go on without interruption, except for the frequent visits to the local pubs, from 2 o'clock on a Sunday afternoon until noon of the following day.

Let me repeat that I have in mind the 'good' parish in which this unpraiseworthy method rather than the direct appeal is employed for obtaining funds—thus vitiating the motive of charity. May I suggest that you elaborate this question?

C. C.

It is clear that our correspondent, who is a priest, feels very strongly on the question of card drives in aid of church funds.

[1] *Maynoolh Statutes,* n. 277.
[2] Ibid. n. 427.

He resents and deplores the frequency and advertisement of these functions. We publish his letter as a vehement rrpression of his point of view. From the strictly theolt there is little that we can contribute by way of elaboration. We hope, however, that the following comments—nnt in the order followed by 'C. C.'—may be relevant, and may help to clarify the issues.

It seems to us that card drives are usually organized by priests in order to find funds for some charitable purpose and to find them in a pleasing manner by providing some healthy amusement at which the people of the parish may meet and enjoy themselves. If the sole purpose of card drives were to obtain funds, and if these funds can be obtained easily by direct contributions, we fail to see why the priest should, in practice, go to the trouble of organizing those functions. Very few would, we dare to hope, resort to such organization merely as a means of self-advertisement. The provision of healthy amusement for the people is a highly commendable and necessary activity. We can, therefore, understand the viewpoint of a priest who, in order to provide such amusement, among other reasons, organizes card drives for church funds in preference to asking direct contributions from the people.

The burden of providing the necessary church funds for the parish should, however, fall justly and equitably upon all the parishioners according to their capacity to bear it. It is suggested by our correspondent that, when these funds are provided by means of card drives, the incidence of that burden is inequitable—for, in his experience, it is the poorer people of the parish who, almost exclusively, patronize the 'drives.' While, on the one hand, since attendance is presumably optional, that experience may be a tribute to the social value of those functions for the poorer people, we agree at the same time that the well-to-do parishioners should not be exempted, or allowed to escape from their share of the common burden, by reason of the generosity and loyalty of the poor. The pica that 'they do not play cards' may, perhaps, excuse some of the well-to-do from attendance at the function, but it rarely need, or should, exempt any of them from a contribution to its objects. By demanding such a contribution the priest may meet the practical problem arising from the non-attendance of the well-to-do—without depriving the other classes of their amusement. A word of explanation on the purpose *of the function, given* beforehand by the priest, would help all the parishioners to understand their *obligations in its* regard.

Our correspondent refers to his experience of abuses in connection with card drives. We cannot believe that the circumstances he instances are general or usual. In any event these abuses are neither essential nor inevitable. They can surely be corrected by means less drastic than the abolition or condemnation of the 'drives'—which may, if properly conducted, be a source of pleasure, amusement and profit. We do not, of course, advocate the policy that all necessary church funds should be found by a frequent and constant succession of card drives. Here, as in all things, a reasonable moderation, which ordinary prudence will dictate, should be observed. It may well be that in some places such moderation is being exceeded.

We see no reason why the motive of charity may not be preserved in patronizing card drives. From our experience, admittedly limited, we feel sure that most of the patrons are motivated by charity. They wish primarily to help the objects in the aid of which the 'drive' is being held. Apart from the actual commission of sin, there is no human activity which may not be performed out of the motive of charity. This motive may inspire attendance at a card drive in aid of church funds no less than a direct contribution to these funds. It is true, of course, that, in the former case, there is the possibility of winning a prize and the promise of amusement by way of compensation-but these factors by no means necessarily preclude, or seriously interfere with, the motive of charity. And looking at the matter from the other angle, may it not be asked whether direct contributions are always motivated by charity? Is there not always the danger that other motives may enter, even predominate—motives which, perhaps, may be summed up under the term human respect?

SECTION X

DOGMATICO—MORAL

ALCOHOLICS ANONYMOUS

What is to be thought of the Fellowship of Alcoholics Anonymous, whose avowed purpose is ' to help the sick alcoholic if he wishes to recover ! '

Victor.

Our correspondent has kindly sent us a number of leaflets and booklets in which are set out and explained the constitution, the aims and the methods of the Fellowship of Alcoholics Anonymous. We have examined this literature carefully and have also read some independent descriptions of the work and history of the Fellowship—which was founded in America in 1934, and now has a membership of over 100,000 scattered over thirty countries. We have been very favourably impressed by what we have read on this subject.

The Fellowship is a voluntary, non-sectarian, non-political society of alcoholics who have an honest and earnest desire to recover (and to stay recovered) from their unfortunate state. It is emphasized that this state is truly a disease in the case of the real alcoholic—a disease which is partly a physical allergy but mainly a form of mental obsession. The aim of the society of Alcoholics Anonymous is to rehabilitate those so afflicted and diseased. The means are social therapy and a programme of recovery which is summarized in twelve steps. The psychological approach seems to be very sound and well-considered. We shall only mention a few points here. The alcoholic finds great human sympathy, understanding and strength in the company of those who have been afflicted as he is, and who are winning through. This fellow-feeling is very helpful. The alcoholic is asked simply to concentrate on keeping *off* one drink, the first, for one day at a time. He is not asked to take a pledge for life. Thus he is not from the outset frightened and depressed by the magnitude of the problem of his recovery. This problem has been reduced to, and set out for him in, manageable proportions. He is exhorted to realize his dependence upon God—whose help must be earnestly asked. As a final step, the twelfth, the alcoholic has set before him the motive of

bringing help and hope to others similarly afflicted. This is a vital and most valuable part of the programme. The alcoholic is made to realize that he can help others. This realization serves to lessen and to destroy his sense of failure and uselessness, and to restore his self-respect. It becomes also a powerful incentive to the alcoholic to persevere in sobriety. The Fellowship has made no extravagant claims for the success of the treatment provided. It does not claim final cures—but rather the effective arresting of the disease. And there is abundant evidence to show that, by means of it and with due co-operation, very many so-called hopeless alcoholics have been rehabilitated.

Anyone who has experience of the great problem and heartbreak of trying to help, and to restore to normality and decency, chronic alcoholics, will be grateful for the aid which this Fellowship proffers. The emphasis of the programme is mainly upon the natural virtues of humility, sincerity, honesty with oneself, and then the need for the help of God. We see nothing in the programme which need conflict in any way with Catholic principles. There is, indeed, evidence that Catholics have, through Alcoholics Anonymous, returned, not merely to sobriety, but to the regular practice of their religion. This is as might be expected. Restoration of a sense of responsibility and self-respect should naturally lead to a conscientious realization of religious duties.

There arc just a few suggestions we would make. Firstly, we should like to see it admitted that, while alcoholism may easily enough reach the stage of being a serious disease in particular cases, this pass is generally reached as the result of earlier and culpable excesses. This admission would have no deleterious effects. It would rather serve as a greater incentive to strive for recovery. Secondly, for the sake of Catholics, we should like to see a reference to the necessity and incalculable value of supernatural helps for the alcoholic in his struggle towards sobriety. These helps can be abundantly obtained by frequent reception of the sacraments. The difficulty about inserting such a reference into the general programme of recovery is that it is desired to keep this programme on non-sectarian lines. But, perhaps, priests who come into contact with members of Alcoholics Anonymous might make for those concerned the point to which we have referred. We are assured that suggestions and co-operation would be welcome. Needless to say the use of the available supernatural means would serve to consolidate successes won along natural lines. The supernatural elevates, it does not destroy, the natural.

THE MASS AS A COMMEMORATION OF THE RESURRECTION AND ASCENSION

The Council of Trent laid it down that the Mass is a 'presenting again' of the reality of the Sacrifice of Mount Calvary. Now in two of the official prayers of the Mass—*Suscipe Sancta Trinitas* and the *Unde et memores*—with this amazingly real memory seems to be coupled equally the memory of the Resurrection and Ascension.

I would be very grateful to know what discussion (if any) there has been among the theologians as to how far the Mass as a memory of the Resurrection and Ascension is on an equality with the Mass as a memory of Calvary. I suggest that there has been a tendency to separate the two, which Our Lord never did in the prophecies of the Passion. The Church of God has imitated Him in the prayers of the Missal. If my suggestion about the equality of the two aspects of the Mass is correct it would introduce a new note of triumphant joy into our catastrophic world. The danger is that comfortable people will use it to evade the certain truth that one cannot have the *joy* without paying a just share of the sorrow.

Observer.

To answer our correspondent's interesting question we must firstly look for light at the sacrifice of Redemption of which the Mass is the memorial and the re-presentation. It is the teaching of Sacred Scripture—particularly of the Pauline Epistles[1]—that the Resurrection and subsequent glorification of Christ, form, together with His Passion and Death, an integral part of the total sacrificial scheme for human redemption and sanctification.[2] In the traditional analysis of sacrifice to God it was held that some form of divine acceptance was essential to complete the act of offering of the immolated victim.[3] *If this* victim were not accepted, the whole sacrifice would be frustrated, stayed on its way; it would not reach its goal or achieve its purpose. So essential was this element of acceptance that it was felt that it should be somehow manifested or symbolized. The Resurrection and Ascension of Christ are firstly the irrefutable manifestation of the acceptance, and ratification by God the Father, of Christ's sacrifice[4]—which reached its final stage and consummation when the great High Priest entered the tabernacle not made by hand, not of this creation, *the* eternal Holy

[1] Cf. Hebrews ix, Rom. iv, 24-5; x, 9; Thess. iv, 14.
[2] Cf. Prat, *Theology of St. Paul*, ii, pp. 200-13.
[3] Cf. Masure, *The Christian Sacrifice*, Book I.
[4] Ibid., p. 158. [5] The priest (of the New Testament, Hebrews ix) is Christ, who covered with the blood shed on Good Friday, entered the third day into the eternal tabernacle, where He was received at the right hand.

of Holies.[1] But the Resurrection and the Ascension are more than the manifestation of divine acceptance. In his Epistle to the Romans, St. Paul wrote that Christ 'was delivered up for our sins and rose again for our justification.'[2] The exegetes have commented at length on the meaning of the phrase that Christ rose again for our justification.[3] Catholic commentators are agreed that this phrase does not mean that the atonement of Calvary was incomplete, or that Christ merited justification for us by rising from the dead, since the onset of death sets a term to the time of merit. Yet Catholic writers generally hold that the phrase in question does assert some sort of causal connection between Christ's Resurrection and the sanctification or justification of mankind.[4]*

This causal connection is variously explained. It would seem, however, that, in every explanation, the Death and Resurrection of Christ are regarded as two closely related aspects of the one redemptive act. *Qui mortem nostram moriendo destruxit et vitam resurgendo reparavit*—as the Liturgy has it.[6] Writers point out that the Resurrection of Christ is the exemplary cause of the true Christian life and the pledge that we too shall rise from the dead. The Resurrection is also the strongest argument for the Divinity of Christ, and the great seal of the Father's approval of all the work of Redemption. There is, too, the historical fact that the Resurrection and Ascension preceded—and in God's designs were a necessary prelude to—the Pentecostal outpouring of the Spirit and the missionary faring forth of the Apostles. But over and above all this, it is clearly scriptural teaching that the divine plan for human redemption and sanctification was not merely that Christ should die for mankind but that He should rise again in triumph over death and should return in glory to the Father and should reign on the right hand as a quickening spirit®—the source of life and grace for the Christian soul. The faith that justifies mankind is not belief in Christ as dead, but as risen, raised up from the tomb, in Christ as living, glorified and life-giving. Thus, as Prat remarks, 'the Resurrection of Jesus is no more a supernatural luxury offered to the admiration of the elect, nor a simple recompense accorded to His merits, nor merely the support of our faith and the pledge

1 Epistle to the Hebrews, ix, 11-12, 24.
« iv, 25.
3 Cf. Prat, op. cit., p. 209.
* Cf. Boylan, *St. Paul's Epistle to the Romans,* p. 73.
6 In the Preface for Paschal time.
• 1 Cor. xv, 45. Cf. Boylan, op. cit., p. 74. Prat states that it is at the moment of the Resurrection that Christ became a quickening spirit, p. 210.

of our hope ; it is an essential complement and an integral part of the Redemption itself.'[1]

The great theologians emphasize the necessary role played by the Resurrection and Ascension in the scheme of human redemption and sanctification. St. Thomas gives five reasons to demonstrate that it was necessary that Christ should rise from the dead. The Resurrection was necessary to commend divine justice, to confirm our faith in the divinity of Christ, to build up the hope of our own future resurrection, to inform the life of the faithful so that they might die to sin and live in God and finally

ad complementum nostrae salutis, quia sicut per hoc quod mala sustinuit, humiliatus est moriendo, ut nos liberaret a malts, ita glorificatus est resurgendo ut nos promoveret ad bona - - - [2]

Later,[3] St. Thomas poses the question whether the Resurrection of Christ is the cause of the resurrection of souls, and in the course of an affirmative reply he writes :

Resurrectio Christi agit in virtute divinitatis quae quidem se extendit non solum ad resurrectionem corporum sed etiam ad resurrectionem animarum ; a Deo enim est et quod anima vivat per gratiam et quod corpus vivat per animam, et ideo resurrectio Christi habet instrumentaliter virtutem effectivam non solum respectu resurrectionis corporum sed etiam respectu resurrectionis animarum ; similiter etiam habet rationem exemplaritatis respectu resurrectionis animarum . . .

Later again[4] St. Thomas asks : ' Utrum ascensio Christi sit causa nostrae salutis,' and states in reply :

Respondeo dicendum quod ascensio Christi est causa nostrae salutis dupliciter, uno modo ex parte nostra, alio modo ex parte ipsius. Ex parte quidem nostra inquantum per Christi ascensionem mens nostra movetur in ipsum. - - - Ex parte autem sua quantum ad ea quae ipse fecit ascendens propter nostram salutem : primo quidem viam nobis praeparavit ascendendi in coelum . . . secundo quia sicut pontifex in veteri Testamento intrabat sanctuarium ut assisteret Deo pro populo, ita et Christus intravit coelum ad interpellandum pro nobis. Ipsa enim representatio sui ex natura humana quam in coelum intulit est quaedam interpellatio pro nobis - - - ; tertio ut in coelorum sede quasi Deus et Dominus constitutus exinde divina dona hominibus mitteret.

De la Taille sums up all this teaching when he writes :e ' Moral cause of our ransom by His Blood, Christ is the efficient cause first of our grace and then of our glory, by the divine *condition* in which God took Him up. In other words the atoning Victim

1 Op. cit., p. 213.
2 *S.T.*, 3, 53, 1.
3 Op. cit., 3, 56, 2.
4 Op. cit., 3, 57, 6.
5 *The Mystery of Pailh and Human Opinion,* p. 14.

who " makcth intercession for us " is also the vital principle by which God communicates to us the breath of life, the spiritual life.'

In the first chapter, Twenty-second Session of the Council of Trent, the Mass is described as

> sacrificium visibile quo cruentum illud semel in cruce peragendum repraesentaretur eiusque memoria in finem usque sacculi permaneret atque illius salutaris virtus in remissionem eorum, quae a nobis quotidie committuntur, peccatorum, applicaretur. - - -[1]

At this point the Fathers of the Council were concerned with the question of the institution of the Mass at the Last Supper and with the relation of the sacrifice of the Mass to that of Calvary. Hence there is explicit reference to the one bloody enactment on the Cross. But there is no denial or doubt that the Mass re-presents, commemorates and applies the fruits of the integral sacrifice of Redemption.[2] The Mass is described in the liturgy as *sacramentum redemptionis.*[3] And, just as we cannot separate the Resurrection and Ascension from the scheme of Redemption, neither can we prescind from the commemoration of these mysteries in the sacrifice of the Mass. And so we have the prayers referred to by our correspondent,

> Suscipe Sancta Trinitas hanc oblationem quam tibi offerimus ob memoriam resurrectionis et ascensionis Jcsu Christi, Domini Nostri. Unde ct memores Domine, nos servi tui sed et plebs tua sancta, ejusdem Christi Filii tui Domini nostri tam beatae passionis necnon ab inferis resurrectionis sed et in coelos gloriosae ascensionis. . . .

Yet, notwithstanding the obvious import of these prayers, the authors generally, as our correspondent remarks, do not seem to refer in any explicit way to the Mass as a commemoration of the Resurrection and Ascension as well as of the Passion and Death of Our Lord. Some few writers, however, do make this reference. De la Taille, for instance, writes of the liturgy of the Mass : ' There comes first the oral commemoration of the Supper introducing the Saviour's words ; then, as if to carry' out the mandate with which they end, follows the remembrance or *anamnesis* of the Passion, Resurrection and Ascension . . .'[4] Indeed, it can further be said that this author's theory of the Mass suggests, in a particular way, the conclusion that this sacrifice commemorates the Resurrection and Ascension equally with the Passion and Death of Our Lord. According to De la

1 Denzinger-Bannwart, *Enchir. Symb.,* n. 938.
«Cf. St. Thomas, 5. *T.,* 3, 83, '1.
3 Secret of Mass of Four Crowned Martyrs, 8 November.
4 Op. cit., p. 23.

Taille the Mass is *oblatio hostiae immolatae*—our offering of Christ who was, once for all, immolated on Calvary, and who retains the status of a Victim, though now risen and glorified and seated at the right hand of the Father. There is then no new real immolation of Christ in the Mass. Such an immolation is no longer possible. There is, of course, the mystic or sacramental immolation symbolized by the separate consecration of the bread and wine. When a priest does what Christ did at the Last Supper, when he recites the words of consecration over the bread and wine, Christ is brought down, is made present, is mystically immolated, is really offered as the eternal, risen and glorified Victim of Calvary. ' There is here the oblation of a Victim, no longer indeed to be immolated, but already and once for all immolated in the past. But this past survives, since Christ always remains the sacrificial Victim of Calvary, even in the midst of the glory that makes of Him an eternal " theothyte " - - - Christ needed not to be put into the condition of Victim : He holds that condition for ever, in virtue of His own Sacrifice, consummated in glory. All we have to do is to re-enact what Christ had done : *Hoc facile.*'[1]

The fact that the Resurrection and Ascension are commemorated in the Mass, equally with Christ's Passion and Death, has been explicitly mentioned also, in recent times, by Masure. In a typical passage this author writes :[2] ' [In the Mass] we commemorate the Passion and Death of our Saviour Jesus Christ, His Resurrection from the dead and His Ascension, in the sense that by repeating the symbolic gesture of the Thursday evening we propose to enclose within it, under sensible and sacramental species, all the reality of Christ's single sacrifice, all the great cycle of return from earth to heaven unfolded between Good Friday and Easter Sunday, the Christian Mystery *itself, Christ's* mystery.'

PURGATORY

I am sending you a few propositions on the subject *of* Purgatory. As you will see they all turn upon the same point. It occurs to me that some of them might be worth discussion in your pages. *I am some* years away from my books, so I am unaware whether any of the propositions are heretical, or whether the doctrines proposed have been formally tolerated.

[1] Ibid., p. 16.
[2] Op. cit., p. 247.

The propositions are :

(1) There is no time in Purgatory. Purgatory is instantaneous.

(2) The amount of one's purgation is determined by its intensity.

(3) The faithful living at the last trumpet will suffer purgatoiy like anyone else.

(4) Masses and prayers for the dead any time after death are efficacious.

(5) The foregoing proposition is strongly suggested by the discipline of the Church which allows, e.g., to missionaries a surprisingly long time in which to fulfil Mass obligations for the dead.

(6) One should not cool off from prayers and Masses for the dead because ' surely he is in heaven by this time.'

(7) The Church discourages Masses in perpetuity. Must one conclude that she believes that after a certain passage of *time* the soul is freed ? May one conclude it is rather because the Church believes that the amount of satisfaction required for an individual soul is limited ?

F. W.

We presume that the foregoing propositions have been taken from some published work—though numbers five and seven seem singularly like a personal commentary by our correspondent. He give us no indication of the source, or of the context, of the propositions. It is not easy, and oftentimes it is unfair, to comment specifically on passages isolated from their context. We shall, therefore, for the most part, confine ourselves to a general statement of the theological teaching in regard to Purgatory as covered by the propositions given.

They refer principally to the duration of Purgatory. A modern theologian[1] has recently written that ' of the duration of Purgatory in regard to individuals we have no knowledge whatever and hence we are not in a position to make a statement, not even an approximate one. . . . The only possible answer to this question and the only one in keeping with truth is *Silence.'* With due deference to the wisdom of that attitude of silence we may, however, discuss some of the points raised in our correspondent's query.

Since he enquires if any of the propositions are heretical it may be welbto recall the official teaching of Trent in regard to Purgatory. The Council defined[2] the existence of Purgatory in which the souls of the just pay whatever debt of temporal punishment they owe at death before they enter heaven. It also defined[3] that the souls detained in Purgatory can be helped by

[1] Bartmann, *Purgatory,* pp. 199-200.
[2] *Canones de Justificatione,* n. 30, Denz. 840.
[3] Sess. xxii, cap. 2. Denz. 940. Cf. Denz. 691, 693.

the prayers of the faithful and particularly by the sacrifice of the Mass. In its twenty-fifth session,[1] having referred to this defined teaching, the Fathers of the Council went on to issue a warning to bishops 'that they should take zealous care thaï tl doctrine concerning Purgatory, which has been handed down by the holy Fathers and sacred councils, is believed and held fast by all the faithful of Christ and should be taught and preached everywhere. But in popular sermons to the simple people the more difficult and subtle questions and all that does not help to edify and tend to increase devotion should be excluded. Similarly, the bishops should not permit the publication or discussion of doubtful matters or of what has the appearance of falsehood. They should prohibit what savours of curiosity, superstition, or of filthy lucre as sources of scandal and offence to the faithful.'

Revelation tells us very little about Purgatory. The natural sciences can tell us nothing positive. The official teaching of the Church has been confined to the few points mentioned. Down through the ages conjecture, imagination and visions have been used, to no small extent, to supplement that meagre information by supplying details in regard to the topography of Purgatory, to the manner of existence and the suffering of the souls detained therein. Hence the warning of the Council of Trent.

The souls in Purgatory are separated from their bodies—*animae separatae.* And while we know they are located in Purgatory we do not know exactly how, as spiritual substances, they are localized. Nor do we know if, or how far, earthly standards of time apply in the next world. But there is duration of some kind in Purgatory. This seems to be clearly implied in the official doctrine, and in the universal teaching[2] of theologians. The purgatorial cleansing is a gradual process. The debt of temporal punishment is not paid in any instantaneous fashion. The principal punishment in Purgatory is said to be the temporary privation of—or the delay in being granted—the Beatific Vision. This is the pain of loss. An instantaneous privation is not a privation at all.

The amount of punishment, however, and the standard by which it is measured are hidden from us. We can well understand that there are different degrees (either of intensity or duration) of punishment according to the ethical status of individual souls. While it is clear from the teaching of the Church that the souls in Purgatory' undergo some form of

[1] *Decretum dr Purgatorio,* Denz., 983
[2] Cf. Beraza, *De Novissimis,* n. 1237 cl scq.

punishment by which they make satisfaction for the debt of temporal punishment due by them, and are prepared for heaven[1]—it must be remembered that there is nothing defined regarding the nature of this punishment.

Sur la nature même de ces peines, aucune definition n'est intervenue, aucune décision de quelque ordre que ce fût.[2]

On the analogy of hell, however, a twofold punishment is usually mentioned[3]—the pain of loss and the pain of sense. We have remarked earlier that the pain of loss seems to us to be the chief punishment. Yet many writers greatly emphasize the pains of sense 'making,' as a writer[4] already quoted has said, 'of Purgatory a suburb of hell rather than an ante-room of heaven.' St. Thomas, indeed, seems to have held that the same fire tormented the souls in Purgatory and the damned[5]—from which many subsequent writers[6] concluded that the difference between hell and Purgatory was merely one of duration. This teaching sounds strange when we remember that the souls in Purgatory possess sanctifying grace, with all its concomitant virtues and gifts, and that they have heard their judgment and know they are saved.[7]

Writers are divided on the question of intensity, versus duration, of punishment in Purgatory. Venerable Bede,[8] for instance, said that some souls, especially those converted at death, unless they were helped by the living, would remain in Purgatory until the end of the world. St. Augustine,[9] on the other hand, took the view that, while not of very long duration, the punishment would be intense. In later times Soto[10] and Maldonatus expressed the view that Purgatory would exceed ten years in no case. Apropos of this contention, Alexander VII condemned the following proposition: 'Annuum legatum pro anima relictum non durat plus quam decem annos.'[11]

The passage in St. Matthew[12] in which Our Lord describes

1 Loc. cit., Denz. 840.
2 *Did. Apolog. de la Foi Cath.* iv, 518.
3 Cf. Beraza, op. cit., nn. 1225-36.
4 Bartmann, op. cit.
5 *In io,* D. 21, Q. 1, a. 1, sol. 2.
6 Cf. Bartmann, op. cit., pp. 183-201.
7 Cf. Props. 38, 39, 40 of Luther, condemned in Bull *Exsurge Domine,* Denz. 777, 778, 779.
8 Cf. *Fixeront* iii, 429.
9 *P.L.,* 32, 779.
10 Soto wrote 'Quapropter crediderim, numquam aliquem in Purgatorio viginti annis exstitisse, immo, ut mea fert opinio, nec decem.' *In iv,* D. 21, Q. 1. a. 2.
11 Denz. 1143.
12 xxv. 31 et seq.

the List judgment ini ,|i; ·lll
be sent to Purgatory. It seems, therefore, that those who are living when the last trumpet sounds will not have to und period of punishment in Purgatory. Apart from th<>s‹·. Purgatory is by no means the inevitable destination of all souls. Many will go directly to heaven. This statement should cause no surprise when we recall that very many Catholics are fortified by the last sacraments,[1] and by a plenary indulgence at the hour of death.

We know, on the authority of the Church, that we can help the souls in Purgatory by our prayers, and by the sacrifice of the Mass.[2] But we do not understand the manner or the measure of that help.[3] It may well be that God accepts as efficacious now, Masses and prayers which will be offered hereafter.

Wc are unaware of any grant by the Church of a surprisingly long period for the discharge of Mass obligations for the dead. In fact it has been generally maintained in regard to the time within which these obligations should be fulfilled that Masses for the dead were more urgent than those for the living.[4] We are likewise unaware that the Church discourages Masses In perpetuity. In the section of Canon Law[5] which deals with the question of pious foundations, there is no hint of any such discouragement. Certain conditions are, naturally, insisted upon, but there is ample provision for perpetual foundation Masses. In fact this seems to be a very normal procedure. The amount of temporal punishment to be paid by the individual soul may sometimes be very great,[6] but it will always be finite or limited. If the duration is short perhaps that deficiency is made up by intensity. It may well happen that prayers and Masses will no longer benefit the souls for whom they are specially intended—but they are not thereby wasted. They may, as St. Thomas suggests,[7] help other forgotten souls in Purgatory. And it is well to recall that while our first duties are towards the departed souls of those near and dear to us, the charity of our prayers should extend to all the souls in Purgatory, because they are all our fellow-members of the Mystical Body of Christ.[8]

[1] The special effect of Extreme Unction is to remove the relics of sin.
[2] Trent : *Decretum de Purgatorio* Sess. xxv, Denz. 983.
[3] 'The question what is the manner or measure in which the sacrifice of the Mass brings comfort to the dead, is one for which we have no satisfactory answer,' Gihr : *Die heilige Sakramente,* i, 686.
[4] Davis : *Moral and Pastoral Theology,* iii, 187.
[5] Cans. 1544-51.
[6] It is said that the gravity of the ancient penances implies that this is so.
[7] *Suppl.* q. 71, a. 14.
[8] St. Thomas, loc. cit., a. 2.

THE POSSIBILITY OF SALUTARY REPENTANCE FOR MORTAL SIN AFTER DEATH

Is it permissible to hold that there is at the end of one's life on earth a fractional instant, no longer time and not yet eternity, in which for the last time God lets the soul see in some new mysterious way the question 'God or not God' to which it must answer?

Tabula Rasa.

It is accepted teaching of Catholic theology that the moment of death, which is the moment at which the human soul separates from its body, definitely marks the end of man's period of probation and merit. We cannot tell precisely at what moment this separation of soul and body takes place. Somatic death very probably is a gradual process but there must, nevertheless, be a precise point of time at which the soul leaves the body. Up to this point man is in *statu viae,* he is a *viator* and is capable of merit and repentance. Beyond this point of time he is not thus capable. After death comes the particular judgment for man—a judgment which is based upon his manner of life as a *viator,* upon his state of soul at the moment of death. Thus, it seems clearly contrary to the accepted Catholic teaching to maintain that there is, after the moment of separation of soul and body, any period, even a fractional instant, in which the soul can freely decide to remain obdurate in mortal sin and to reject God finally or, contrariwise, to turn back to God in repentance. The length of this period makes no difference whatsoever to the principle. If we postulate that there is any period of probation, however short that period, we run counter to the principle that man's time of probation ends at the moment of death. It can, we think, be admitted that, at the last moments of its earthly life, the soul gets some illumination whereby it is enabled to see more clearly the consequences of sin, and of turning away from God, and can then make the deliberate choice of remaining obdurate in mortal sin.

The possibility of effective repentance on the part of those who die in mortal sin, or at least of some of them, had been mooted in various forms at different periods in the history of Catholic theology—from the time of Origen down to our own day. But at no time did Catholic teaching countenance this possibility.[1] The theologians appointed to prepare the *schemata*

[1] Cf. St. Thomas, *S.T. Suppl.,* q. 99, aa. 2, 3, 4.

of the dogmatic constitution *De fide Catholica* for the Vatican Council made this interesting statement :[1]

> Hie locus, ubi cie lapsu humani generis agitur, existimatus est opportunior ad inserendam definitionem de aeternitate poenae infligendae pro quovis lethali peccato in hac vita non expiato. Definitio huius dogmatis censebatur maxime necessaria propter periculum grave erroris, qui etiam inter homines catholicos disseminatur. Universim poenas inferni earumque aeternitatem nonnisi homines impii et increduli negant ; sed sunt nunc aliqui qui sibi aliisque persuadere conantur, salva fide catholica, admitti posse quorundam peccatorum mortalium, quibus maculata anima ex hac vita decesserit, expiationem et remissionem futuram in altera vita. Pendere vero, aiunt, hanc futuram expiationem ab animi dispositione in qua homo obierit ; pro iis nimirum qui, non animo obdurato, sed cum aliqua voluntate emendationis, attamen rei mortalis peccati et ante eius remissionem decesserint, locum fore salutari paenitentiae et remissioni peccati in altera vite ; atque ita, qui actualiter infecti peccato lethali moriuntur, non omnes in aeternum damnari.

These theologians seem to have had particularly in mind theories like that of Hirscher[2] who taught that those who died in mortal sin could do salutary penance in the next life if they retained some desire of amendment and hence did not die with hearts completely obdurate in sin.

Our correspondent has kindly directed our attention to a modern work[3] in which what appears to be a modified version of the theory of Hirscher is propounded. In order to demonstrate the reasonableness of eternal punishment for sin, the author of this modern work examines closely the nature of the sins so punished, or rather he analyses the mentality of the sinner who is eternally damned. In this analysis the author claims that he is following basic principles laid down by St. Thomas. Briefly, the relevant points of the author's thesis are the following.[4] Only those sinners are condemned to eternal damnation who have, by a full and free exercise of their will, remained absolutely and finally obdurate in their aversion from God by mortal sin. This fully free will act *of* absolute and final obduracy can be made, and is made, only in the moment after the soul separates from the body. Of course, every mortal sin is objectively a complete turning away from God as our last end. And, prior to the separation of soul and body, man, by his mortal sins, does predispose himself to reject God finally—but he does not, at least subjectively, then make the will act of total and final

[1] Cf. Friedrich, *Documenta ad illustrandum Concilium Vaticanum,* ii, p. 21.
[2] *Die Christliche Moral* (1838), iii, §§691-2.
[3] *Theologumena II: De Ratione Peccati Poenam Aeternam Inducentis* by Father CfB revic-w^by Father William A. Heusman, S.J., in *Theological Studies,* x (1949), pp. 118-22-

rejection. This act is made only when the soul, freed from the fetters of the body and illumined by a special intuitive knowledge, freely and irrevocably chooses 'God or not God.' And on this final choice depends the fate of the soul for all eternity. If the soul, despite the clear perception of the realities which is given to it, obdurately chooses to remain turned away from God, then eternal punishment is seen to be a reasonable, and the only fitting, punishment for such a choice. In fairness to the author, it must be pointed out that he docs not suggest that it is easy for the sinner to repent and to turn to God in this moment of final illumination and choice, or that many sinners will so repent; but he does suggest that this repentance is possible for some sinners.

We think that this view is untenable. However we look at it, the view really extends the period of probation, and of possible repentance for some, beyond the limits of the present life. We cannot identify the last moment of this life with the first moment of the next life. There is a succession of states—*status viae, status termini.* As we noted earlier, there must be a point of cleavage at which the *status viae* ends; and that point, in the traditional teaching of the Church, is the precise moment at which the soul leaves the body. We cannot accept that any soul which is in mortal sin when it leaves the body can make an act of salutary repentance. The act of will made by a disembodied soul in mortal sin of necessity conforms to, and confirms, the prior state of aversion from God—whether that act be made immediately after, or long after, the soul departs from the body. Father Manyâ claims that his view is based upon Thomistic principles. But we have not been able to discover anything in the relevant sections of St. Thomas[1] which would lend any support to the view that man's eternal fate can ever depend upon any free and independent act of the soul after it leaves the body. On the contrary, St. Thomas emphasizes, over and over again, that the soul receives its reward or punishment immediately after it leaves the body:

> Statim igitur cum anima separatur a corpore praemium vel poenam recipit pro his quae in corpore gessit.[2]

Indeed, in the teaching of St. Thomas, the disembodied soul is totally incapable of the type of free will act contemplated by Father Manyâ. St. Thomas holds that, immediately after its separation from the body, the soul becomes *immobilis* so that

[1] Cf. loc. cit., *supra.*
[2] *Sumina contra Gentiles,* lib. iv, q. 91.

a change of will from good to evil, or evil to good, is no longer possible.

Animae statim quum a coq ecundüm voluntatem redduntur, ut scilicet ult< ' hominis mutari non possit neque de bono in malum, neque de malo in bonum.[1]

And again :

Animae quae statim post mortem efficiuntur in poenis miserae, redduntur immobiles secundum voluntatem. . . . Inordinata voluntas numquam ab eis tolletur. . . . Animae (separatae) malorum immobiliter inhaerebunt fini quem sibi elegerunt.'

Thus the separated soul, from the instant it leaves the body, is incapable of an independent free will act of choice of ' God or not God ' ; it must, of necessity, confirm the choice already made before the moment of separation.

BILLOT'S TEACHING ON EXTRAORDINARY GRACES *IN ARTICULO MORTIS*

Apropos of the above discussion a correspondent has very kindly directed our attention to a reply which appeared in *L'Ami du Clergé* (5th April, 1951, pp. 222-3). The reply dealt with the false suggestion that Billot taught that souls get, *in arliculo mortis,* an extraordinary illumination whereby, even the greatest sinners, untrammelled by passion, prejudice or habit, can see the wonderful goodness of God and the ingratitude of their lives and can utter a cry of repentance which, being the outcome of perfect charity, immediately makes of them children of God. The author of the reply in *L'Ami du Clergé* pointed out that this *canard* regarding Billot's teaching was first mooted in 1922. Correspondents had found it in Beaudenom's *Méditations affectives et pratiques sur l'Évangile* (t. iii, p. 150) and in a brochure by Dom Demaret entitled *Les Morts peu rassurantes, motifs d'espérance al de prière.* In this latter work a reference was given to *L'Almanach de l'Espérance* (Martligeon, 1918, p. 149). In 1923 *L'Ami du Clergé* carried a disclaimer on behalf of Billot. It is now explicitly revealed by the author of the reply, A. Michel, that the disclaimer came from the pen of Cardinal Billot himself. The disclaimer runs :

N'a jamais pensé, ni à plus forte raison écrit de pareilles choses ; que jamais même il n'a touché l'argument *des morts peu rassurantes,* soit de près, soit de loin. Et, s'il avait touché, c'eut été pour donner un démenti, aussi

[1] Ibid., q. 92.
[2] Ibid., q. 93.

catégorique que possible à une doctrine théologique bien digne de figurer dans un Almanach.

Michel also illustrated Billot's genuine doctrine by a long quotation from an address given in Rome in which the Cardinal dealt particularly with the death, on the field of battle, of soldiers fighting for their fatherland.

THE RELATION OF KNOWLEDGE OF THE FUTURE LIFE TO SIN—AMONG JEWS AND GENTILES

It appears that exegetes state that knowledge of the after-life was obscure at first in the Old Testament and was only progressively revealed. But St. Paul says that even the pagan is guilty if he does not recognize God as a rewarder and punisher. Surely this means an adequate rewarder and punisher? The chosen people must have been in a better position than the pagans. Could you kindly say how this difficulty is resolved, and also whether it is admitted that Abraham and Moses, for instance, were enlightened as to the eternity of reward and punishment? I have put the difficulty as barely as may be and without any argumentation such as occurs even to me. I realize that mortal sin need not be an explicit rejection of God, but only a serious rejection of the voice of conscience, but it does seem contrary to the goodness and justice of God that a person could be damned for all eternity without knowledge of this sanction.

S. R.

It would be clearly impossible in the space at our disposal here to give anything more than a skeleton answer to the query proposed by 'S R.' Moreover, there are in this query many implications, a complete discussion of which lies entirely outside the sphere of our competence. We can only set down the broader Unes of a reply. Our readers will be well aware of the problems posed by the theory of divine retribution which was current in the Old Testament period right down to almost a century before Christ. From the earliest days the Hebrews seem to have fully accepted the doctrine that the human soul somehow survived after the death of the body. But until the revelation of the Book of Wisdom, say about 100 B.C.? they had no precise knowledge, indeed hardly any positive knowledge, of the manner or mode of this survival. The departed souls, of the wicked as well as of the just, lived on in Sheol. But existence there was a shadowy and nebulous thing, little better than non-existence. The chief characteristic of life in Sheol, as we find it described in the earlier Old Testament literature,

was that everything associated with life on earth, even contact with God, was cut off.[1]

The main content of the early revelation had primary reference to the doctrine of a personal God who had certain attributes. God was the Creator. He was one,[2] omnipotent, transcendent. He was just. The Hebrews were particularly conscious of God's justice, conscious that this justice demanded the reward of virtue and the punishment of evil. These points recur over and over again in the pages of the Old Testament. But until the Book of Wisdom appeared the Hebrews seem to have no thought that these punishments and rewards might be meted out after death.[3] Consequently they were led, indeed forced, by the current doctrine, to look in this life for the manifestation of God's justice in relation to good and evil actions. And they saw in earthly prosperity the reward of virtue, and in earthly adversity God's punishment for sin.

This notion of divine retribution in this life was complicated by another factor. The Hebrews were supremely aware of their national solidarity *vis-à-vis* the Creator. For a long time they concentrated on a sort of collective responsibility to God—their duty, as a nation, to Him Who had promised prosperity as a reward for their national fidelity. Naturally, then, national disaster was seen as a punishment for collective apostasy, just as national prosperity was the sign and reward of collective fidelity. And, broadly speaking, this view corresponded with the facts of history. But in that concentration on a scheme of collective responsibility the rôle of the individual was submerged. It was only in the prophetic literature[4] that the notion of individual responsibility came to be developed. And when it was developed, the theory of divine retribution in this life was applied also in regard to the individual's actions. Earthly prosperity and happiness were the signs of, and the reward for, the individual's virtue, while earthly adversity and suffering were regarded as an indication of, and punishment for, the individual's sins. But here the facts did not always appear to square with the theory. There were instances in which the

[1] Cf. E. J. Kissane, *The Book of Job*, Introd., pp. xvi-xvii.

[2] The predominant purpose of the pre-Exilic revelation was to safeguard the doctrine of monotheism. The Jews were very exposed to temptation to abandon this doctrine. They were surrounded by pagan and idolatrous peoples. Hence the constant and simple message of God to His people. It was only in the post-Exilic period, when the doctrine of monotheism was securely established, that a wider content appears in revelation.

[3] Cf. E. F. Sutcliffe, S.J., *The Old Testament and the Future Life*, p. 24 *et alibi*.

[4] Cf. Isaias, Jeremias, Ezechiel.

good and virtuous did not prosper but rather suffered grievously, while frequently the wicked were successful and prosperous. How could these facts be reconciled with the goodness and justice of God ? This is the problem which is presented many times in the Old Testament and which forms the particular theme of the Book of Job.[1] Partial solutions were found in the suggestion that the prosperity of the wicked, and the suffering of the just, would be temporary and of short duration ; or in the suggestion that the apparently just were guilty of secret sins and that the apparently wicked were really virtuous. But these solutions were obviously incomplete, and the problem was finally resolved only in the revelation of the judgment after death, and of the future life of reward or punishment.

All this is a somewhat lengthy affirmation of our correspondent's opening statement that knowledge of the future life was only gradually revealed in the Old Testament. But this affirmation may also serve as a background against which we can briefly examine the other points raised in the query. Incidentally we may say that we are not sure that we see the sequence of thought in these points. St. Paul[2] does, indeed, teach that the pagans were blameworthy, inasmuch as they did not recognize the existence of God manifested in creation, inasmuch as they grossly violated the natural law written in their hearts, inasmuch as they should have known that they deserved death for these violations. Thus it is implied in St. Paul that the requisite conditions for grave sin were verified in the case of the offending pagans. Their ignorance was to a large extent culpable. It seems undeniable that Abraham and Moses had no clear notions of the future life ; and had, or gave, no enlightenment as to the eternity of reward for virtue or of punishment for grave sin. Yet the Jews were in a much more favoured position than the pagans. A clear concept of the personal God, and of His justice, had been revealed to the Jews. They had the Mosaic law, in addition to the natural law, to guide them. They had some detailed knowledge of what sin was, and of what was sinful. They knew that sin was an offence against the majesty of God, and they had been clearly told that certain acts were a grievous offence meriting, in a particular way, God's anger and serious punishment—a punishment which,

[1] No real solution of the problem is advanced in the discussions in the *Book of Job*. The popular solutions are put forward. But they do not meet the case under discussion. Job himself can see no way of reconciling his misfortune and sufferings with the justice of God. The whole situation is shrouded in mystery—cf. Kissane, op. cit., pp. xx-xxx.

[2] Cf. Romans i.

though for a long time it was not conceived as extending beyond the frontiers of the present life, was nevertheless regarded as an adequate and dreaded sanction. Perhaps it might even be said that the proximity of the impact of earthly punishment was, in a sense, a more potent sanction than one deferred to another and remoter life. Of course in the immediate pre-Christian period the Jews were conscious of the eternal sanction for serious sin. But even prior to this, by reason of their greater advantages, helps and knowledge, the Jews were, as St. Paul does not fail to note,[1] more blameworthy for their sins than were the pagans.

The argument inherent in our correspondent's letter seems to run in two directions at this point. On the one hand it might be said that if the Jews, notwithstanding long centuries of revelation, did not have, until a very late period, an adequate knowledge of the future life—*a fortiori,* the pagans, bereft of this revelation, did not have this adequate knowledge.[2] Yet, on the other hand, we have the assurance of St. Paul that the pagans were gravely blameworthy for their unnatural lives, and that the sinful Jews were still more blameworthy. It must, we think, be accepted as beyond doubt that the sinner's awareness of the eternity of punishment is not a necessary pre-condition for mortal sin. Otherwise we should reach the conclusion that, prior to the revelation of Wisdom, no Jew committed mortal sin, and that pagans of that period and, indeed, of many other periods, were likewise immune from grave guilt. But these conclusions would contradict the teaching of St. Paul. Our correspondent suggests that it seems contrary to the goodness and justice of God that a person should be punished for eternity without knowing of this sanction. We are in deep and mysterious waters here. We cannot comprehend the mind or attributes of God. We know that He is good and just, and that He will treat His creatures not merely equitably but mercifully. He will assess, as He alone can, the exact measure of the sinner's responsibility and guilt, and will proportion punishment thereto. Responsibility and guilt for sinful action will have a relation to the sinner's knowledge—but to knowledge not of the sanction but of the malice of the sinful act. Sin is essentially a violation of God's order—grave sin is a violation in a serious manner. The existence of an eternal sanction for this violation is a

[1] Cf. Romans ii, iii.

[2] Rudimentary notions of retribution in the next life seem to have been current among some of the pagan races, e.g. among the Egyptians—Cf. Sutcliffe, op. cit., pp. 2-8.

secondary and accidental factor. It is because the sin is antecedently grave that the liability to eternal punishment is incurred. Grave sin would remain such, and would merit eternal damnation, even if, in fact, this sanction had not been appointed for it. The question of eternal punishment gives rise to certain difficulties even in the Christian dispensation. How often, one may wonder, are even Christians conscious or aware of the eternal punishment appointed for unrepented mortal sin? They will, of course, be aware of punishment beyond the grave. But *eternal* punishment? The very term *eternal* eludes, indeed is hardly amenable to, human comprehension. We cannot presume to say in any final way what degree, or if any degree, of knowledge of an eternal sanction for grave sin might be required in the sinner before the justice and goodness of God would—so to speak—allow Him to condemn the soul to hell. But it can be said that the theological and historical arguments indicate that knowledge of this sanction is not at all necessary for grave guilt; nor, it would seem to follow, is the knowledge necessary for the incurring of the consequences of grave guilt, namely liability to eternal punishment.

TOTAL WITHDRAWAL OF GRACE FROM OBDURATE SINNERS

Some time ago I heard a preacher make the following statement in a sermon to a crowded congregation: "Has the patience of God no limits? I assure you, my brethren, that it has and that God has provided a certain number of graces for all of you beyond which He will not go. The mercy of God is infinite in itself, but in its acts and effects it is limited. The certain and fixed number of graces may already have been reached in your regard. I hope that you have not sinned too far; but you may have had your last grace and there is no more for you."

Would you please give, at your convenience, a short comment on such quasi-Jansenistic utterances?

Meditans.

In order to vindicate, and accurately to explain, the doctrine of the universal distribution of divine grace, in pursuance of the salvific will of God, the theologians commonly make a number of distinctions among the recipients, according to the measure and manner in which they receive this grace.[1] Thus the theologians distinguish between the position of the faithful and that of

1 Cf. Van Noort, *De Gratia Christi,* nn. 88 et seq.; Hervé, *Manuale Theol. Dog.,* iii, nn. 232 et seq.

infidels, between adult infidels and infants. Among the faithful a distinction is made between the position of the just and that of sinners. And sinners, in this context, are divided into two classes—ordinary sinners *(peccatores communes)* and obstinate or obdurate sinners.[1] Our correspondent's query is concerned with the graces given to sinners, and particularly to those who might be called obstinate sinners.

It is the accepted teaching of Catholic theology that all sinners, both ordinary and obdurate, receive, so long as they remain on earth and have the use of reason, grace which is truly sufficient to enable them to repent. Beraza sets down this thesis :[2]

> Omnibus peccatoribus, etiam excaecatis et induratis, datur pro tempore et loco gratia proxime vel remote sufficiens qua possint agere paenitentiam salutarem.

Later, in explaining this thesis, the same author states :[3]

> Theologi catholici communiter docent . . . nemini, quantumvis induratus sit in peccato, deesse gratiam ex parte criminum aut multitudinis eorum, perinde ac si essent crimina aut numerus eorum qui in hac vita remitti non possit.

The writers further discuss the theological status of this teaching.[4] That ordinary sinners receive sufficient grace to enable them to repent, and to dispose themselves for justification, is described as a defined doctrine.[5] Reference is made to the teaching of the fourth Lateran Council® and to that of the Council of Trent.[7] That all sinners, even the most obstinate in sin, also receive, during life, graces which are sufficient for their repentance and conversion is usually classed as a certain and the more commonly accepted doctrine. Again Beraza writes :[8]

> Omnibus peccatoribus, etiam induratis, nullo excepto, non solum offerri sed etiam conferri a Deo gratiam sufficientem ad conversionem est doctrina longe communior et vera.

Indeed, Van Noort says of this statement regarding all sinners :[9]

[1] For meaning of ' obstinacy ' in this context cf. St. Thomas, *De Veritate,* q. xxiv, a. 11. Tanquerey, *Synopsis Theol. Dog.,* iii, n. 80, makes a distinction between ' peccatores obcaecati ' and ' peccatores obdurati '—' obduratio est perversio voluntatis ' ; ' obcaecatio est perversio intellectus.'

[2] *De Gratia Christi,* ad n. 416.

[3] Op. cit., n. 416.

[4] The proof, from Scripture and Tradition, for this doctrine will be found in the authors quoted.

[5] Cf. Van Noort, op. cit., n. 90.

[6] Cap. *Firmiter,* Dcnzinger-Bannwart, *Enchir. Sym.,* n. 430.

[7] *Sess.,* vi, cap. 14. Denz., n. 807.

[8] Op. cit., n. 416.

[9] Op. cit., n. 90, note 2. Cf. Hervé, op. cit., n. 235.

Spectatis enim conciliorum effatis et quotidiana universalis ecclesiae praedicatione, equidem non video, quare et haec assertio ad fidem non pertineret.

It seems clear to us that the preacher's pronouncement, as quoted by our correspondent, contains implications which run directly counter to the Catholic doctrine we have outlined. The term Jansenistic has not been unfairly applied to these implications. They bear a close similarity to a heading of a chapter in one of the works of Jansenius. The heading reads il

Excaccati et obdurati carent gratia sufficienti, qua videant et moveantur ad bonum.

Of course, the points which the preacher wished to make arc obvious enough. He wished to emphasize the danger of neglecting or rejecting grace, the danger of continuing in sin, of postponing true conversion to God, etc. All these are admirable points ; but, perhaps in his anxiety to drive them home, the preacher grossly exaggerated, and thus departed from the true Catholic teaching. We may add here that no theologian will deny that, in the ordinary course of God's providence, those who are obstinate in sin will be deprived of many graces which are given abundantly to those who are co-operative. It is in this indirect and permissive sense that sacred Scripture speaks of God as blinding the eyes and hardening the hearts of sinners.[1] ' There is indeed one class of sinners whose case presents special difficulty. If a man should persevere for a long time in the commission of grievous sin, not falling through human frailty, but doing wrong of deliberate and set purpose, he becomes obdurate in evil. The mind becomes blinded and the will hardened. He seems incapable of compunction or even of any realization of spiritual truth. From such God seems to have turned away His face. Yet even in such cases we must not suppose that the soul is so rejected by God as not to receive any assistance. He does not deprive these men of His ordinary graces ; and these, if they would only use them, are sufficient.'[3]

[1] *De Gratia Christi,* l. iii, c. 10.

[2] ' Deus non est, nec esse potest, causa directa positiva et efficiens indurationis impii sed dici potest eius causa occasionalis . . . et permissiva. . . . Subtrahit non quidem omnem gratiam, sed uberiora auxilia, quibus sublatis, permittit impium se libere coniiccrc in miserum obdurationis statum. . . .' Hervé, op. cit., n. 237.

[3] Joyce, *The Catholic Doctrine of Grace,* pp. 206-7.

ANTECEDENT PREDESTINATION AND CALVINISM

The Bannezian *ante praevisa merita* predestination theory (also upheld by De Lugo, Ruiz, Billot and Janssens) seems to me to coincide substantially with Calvin's heretical view of the problem. It appears to undermine the entire system of Catholic morality and human freedom and Father Lennerz in his treatise *De Deo Uno* challenges any Thomist to dare to expound and defend the Bannezian solution from the pulpit. It would, he pertinently remarks, deeply offend, scandalize and paralyse the good sense of the faithful. True, the doctrine of predestination is shrouded in very great mystery and must necessarily be most abstruse and speculative, but since man's human acts or their omission, with the consequent merit or demerit, are directly involved, it is also intimately and profoundly personal and practical.

I shall look forward to your comments on the above.

Exul.

The foregoing query really raises the whole question of the manner in which the salvific will and the decrees of God operate in relation to the saved and the lost. This is a vast and, at many points, a most mysterious question involving, as it does, not merely God's immutable decrees and His infallible foreknowledge but also the nature and the operation of efficacious grace. Father Garrigou-Lagrange notes[1] that between the two precipices of error (pelagianism and predestinarianism) 'the revealed truth towers like a mountain whose peak cannot be seen. It will be seen only in heaven, for it is the intimate reconciliation of infinite mercy, justice and supreme liberty in the eminent Deity.' It would obviously be impossible in the space at our disposal here to attempt even a satisfactory summary of the various theological controversies and theories concerning the mode of predestination, and of its counterpart, reprobation. Still less, indeed, would it be possible here to give any worthwhile evaluation of the different theories. Consequently we approach the query submitted by 'Exul' with a certain degree of reluctance and with a sense of frustration. The best that we can hope to do is to refer to one or two of the more specific points raised.

Predestination has been defined by St. Thomas[2] as

ratio transmissionis creaturae rationalis in finem vitae aeternae in mente divina praeexistens.

In a later article of the the same question we read :[3]

[1] *The One God,* English translation by Dom Bede Rose, p. 670.
[2] S.T., 1, 23, a. 1.
[3] a. 3.

Sicut praedestinatio est pars providentiae respectu eorum qui divinitus ordinantur in aeternam salutem, ita reprobatio est pars providentiae respectu illorum qui ab hoc fine decidunt. Sicut etiam praedestinatio includit voluntatem conferendi gratiam et gloriam - - - ita reprobatio includit voluntatem permittendi aliquem cadere in culpam et inferendi damnationis poenam pro culpa.

It is defined Catholic doctrine that there exists in the divine mind a decree or plan, according to which some will attain eternal life, whereas others will be excluded therefrom.[1] Many centuries ago it was stated in the Council of Quierzy :[2]

Homo libero arbitrio male utens peccavit et cecidit et factus est massa perditionis totius humani generis. Deus autem bonus et iustus elegit ex eadem massa perditionis secundum praescientiam suam quos per gratiam praedestinavit ad vitam, et vitam illis praedestinavit aeternam : ceteros autem, quos iustitiae iudicio in massa perditionis reliquit, perituros praescivit, sed non ut perirent praedestinavit ; poenam autem illis, quia iustus est, praedestinavit aeternam.

Later in the decrees of this same council we read :[3]

Deus omnipotens omnes homines sine exceptione vult salvos fieri licet non omnes salventur. Quod autem quidam salvantur salvantis est donum, quod autem quidam pereunt, pereuntium est meritum.

A few years subsequently the Fathers of the Council of Valence declared :[4][5]

Fidenter fatemur praedestinationem electorum ad vitam et praedestinationem impiorum ad mortem : in electione tamen salvandorum misericordiam Dei praecedere meritum bonum, in damnatione autem perituroru meritum malum praecedere iustum Dei iudicium.

It is clear from these texts, and from many others which might be quoted,[6] that it must be accepted in every orthodox theory of predestination and reprobation, that, *in ordine executions* at least, eternal life is the reward of the meritorious actions of the predestined, and eternal damnation is the punishment for grave unrepented sin. It is clear also that even *in ordine intentionis* any form of antecedent positive reprobation (that is, an absolute decree of God preordaining certain souls to sin and hell *ante praevisa demerita)* is irreconcilable with the Catholic teaching on the salvific will of God. At this point, therefore, the teaching of Calvin runs counter to orthodoxy—for Calvin maintained that the reprobates are positively and unconditionally predestined, by God's eternal decree, to sin and hell. He wrote :[8]

1 Cf. Hervé, *De Gratia Christi,* n. 214.
2 Dcnzinger-Bannwart, *Enchiridion Symbolorum,* n. 316
3 Ibid. n. 318.
« Ibid., n. 322.
5 Cf. Cone. Trid., sess. 6, cap. 12, 15, 16.
• *Instil.,* 3, c. 21, n. 5.

Praedestinationem vocamus aeternum Dei decretum, quo apud se constitutum habuit, quid de unoquoque homine fieri vellet. Non enim pari conditione creantur omnes, sed aliis vita aeterna, aliis damnatio aeterna praeordinatur. Itaque prout in alterutrum finem quisque conditus est ita vel ad vitam vel ad mortem praedestinatum dicimus.

And Father Pohle writes * ' It was Calvin who elaborated the repulsive doctrine that an absolute divine decree from all eternity positively predestined part of mankind to hell and, in order to attain this end effectually, also to sin.'

Our correspondent suggests that the theory of predestination and reprobation propounded by some of the Thomist schools is really identical with the heretical view of Calvin. This suggestion is not true. However difficult it may be to sustain the more extreme Thomist view, none of its exponents would, or could, accept anything equivalent to Calvin's teaching on positive unconditional reprobation.[3] It is true, of course, that the Thomists generally, and some few Molinists also, hold for negative reprobation *ante praevisa demerita*—which is the analogue of their doctrine of predestination *ante praevisa merita.* Different explanations are given of the precise nature of this negative reprobation. In the more extreme view—which, apparently, our correspondent has primarily in mind—negative reprobation *ante praevisa demerita* consists in God's decree or will to exclude some souls from glory as from an undue benefit. A less extreme view describes negative reprobation as

mera non-electio cum voluntate permittendi ut non-electi peccent et ideo etiam poenam infligendi pro culpa.·

Both these explanations are given by the Bannezian school. But in neither explanation is there, by implication or otherwise, question *in ordine intentionis, of* any positive predetermination of the damned to sin and hell;[4] and, *in ordine executionis,* eternal damnation is the punishment for the individual's unrepented sins. As has been hinted already it is, however, difficult to reconcile the more extreme view with the Catholic doctrine of

[1] *Cath. Encycl.,* sub v. Predestination.

• [1] There is a vast difference between Calvinism and Thomism, inasmuch as Calvinism maintains the extinction of free will after original sin, it being an empty title. Thus there is an end of all merit, of all merit in obedience. The mystery of predestination is contaminated at its source by reason of the denial of God's universal will to save, which means the overthrow of the whole Christian religion.'—Garrigou-Lagrange, op. cit., p. 585.

[3] Cf. Hugon, *De Deo Uno,* p. 290.

[4] Early in the sixth century it was declared at the Second Council of Orange: 'Aliquos ad malum divina potestate praedestinatos esse, non solum non credimus, sed etiam, si sunt qui tantum malum credere velint, cum omni detestatione illis anathema dicimus.'—Denz.-Bannwart, op. cit, n. 200.

God's universal salvific will. This difficulty is well recognized even by ardent Thomiste. Father Garrigou-Lagrangc writes:[1] ' This opinion of certain Thomists seems scarcely reconcilable with God's universal will to save. For God, to the utmost extent, sincerely wills, by His antecedent will, that all be saved, so that it is their own fault if they arc damned. But He would not will all to be saved if, before having seen any sin on the part of the reprobate, He had decreed positively to exclude such a person from eternal salvation as from a gift to which one is not entitled.' What we have described as the less extreme view of negative reprobation *ante praevisa demerita* does not present anything like a similar difficulty. It involves no injustice and can more easily be reconciled with the doctrine of God's salvific will.[2]*

Our correspondent refers to a work of Father Lennerz. He argues, as the Molinists generally argue, that negative reprobation *ante praevisa demerita,* in whatsoever sense its nature be explained, is really equivalent to positive reprobation.

> Negativa reprobatio videtur aequare positivam ; nam velle excludere a gloria, vel velle non efficaciter eligere ad gloriam de facto est velle ut damnetur. Homo enim qui non salvatur, damnatur ; tertium non datur ; similiter qui non vult ut homo salvetur eo ipso non potest non velle, ut damnetur.[3]

We may remark here that we do not think that this argument is valid.[4]* It is possible, we believe, to make an adequate distinction, *in ordine intentionis,* between *voluntas Dei positive damnandi aliquos* and *voluntas Dei non eligendi aliquos ad gloriam.* Despite a fairly wide search we have not been able to locate the particular challenge mentioned by our correspondent as issued by Father Lennerz to any Thomist. We did find a passage in which our author quotes, with approval, a statement of Pesch in which the consoling character of the Molinist theory of consequent predestination and reprobation is extolled and contrasted with that of the antecedent theory. Father Lennerz then continues with what seems to us to be a somewhat enigmatic sentence.

> Fiat contio ad populum de reprobatione antecedente negativa quae . . . necessario cum praedestinatione ad gloriam ante praevisa merita habetur, et statim apparebit quam consolatoria sit haec doctrina, quantopere fiduciam in Deum excitet et ad bene operandum instimulet.[5]

Is this the challenge ? We might further ask, in view of our correspondent's statement, why should a challenge to preach

[1] Op. cit., p. 685 ; cf. Hervé, op. cit., n. 209.
[2] Cf. Hugon, loc. cit.
[3] *De Deo Uno,* n. 453.
[4] Cf. St. Thomas, *S.T.,* 1, 23, a. 5.
[5] Op. cit., n. 481.

the doctrine of antecedent predestination and reprobation have been issued only to Thomists ? Why not also to the followers of St. Robert Bellarmine, Suarez, Francis de Lugo and Ruiz ?

THE UNION EFFECTED BY SANCTIFYING GRACE

Recourse to your journal has been heartily suggested by members of a clerical study group here in Boston. In our last meeting we discussed the inhabitation of the Trinity in the soul of the just. We would appreciate your solution and point of view on the following problems which we were unable to solve.

(1) Is our union with God through grace essentially the same as the union of the blessed with God in the Beatific Vision? In other words, is the *lumen gloriae* the flowering of grace or an entirely distinct entity?

(2) Does the inhabitation of the Trinity in the soul of the just precede charity in the logical order? Does it precede charity in the order of efficient causality ? In other words, which is the cause of which ?

(3) Is the inhabitation of the Trinity in the soul of the just the elevation of the natural presence of God through immensity to the supernatural state ; or is an entirely new relation, a new mode of presence, set up ?

Sacerdos.

Anything like a complete answer to the three questions posed by our correspondent would entail an extended discussion of the doctrine of grace. The demands of time and space preclude such a discussion here. The brief reply which it is possible to give may, however, serve our correspondent's purpose, and the references appended will indicate a field of reading which the members of the study group may usefully investigate.

(1) By the infusion of sanctifying grace into our souls we are made *consortes divinae naturae.*[1] In some mysterious way the intimate life of the Godhead, shared by the Persons of the Trinity, is communicated to us. We are raised to the dignity of sons and heirs of God, of co-heirs with Christ. The participation in the divine life which is given to us in sanctifying grace is physical and formal—but, of course, it is only accidental, not substantial. We do not lose our individual personality as a consequence of sharing in the divine life and nature.[2] St. Thomas writes :[3]

[1] 2 Peter i, 4.
[2] Cf Tanquerey, *Syn. Theol. Dog.,* nn. 149 et seq.
[3] *S.T.,* 1-2, 110, 2 ad 2.

Quia gratia est supra naturam humanam, non potest esse quod sit substantia aut forma substantialis ; sed est forma accidentalis ipsius animae. Id enim quod substantialiter est in Deo, accidcntaliter fit in anima participante divinam bonitatem.

Moreover, the participation in the divine life and nature which results from grace is analogical or inadequate.[1] That is to say, the divine life is not communicated to us in the same degree in which it exists in God but in a finite measure proportioned to the capacity (the *potentia obedienlialis}* of the human recipient.[2] Sharing in the divine life by grace, we arc in intimate contact with, and, in a sense, in enjoyment of, the Godhead. As St. Thomas puts it :[3]

Per donum gratiae gratum facientis perficitur creatura rationalis ad hoc quod libere non solum ipso dono creato utatur, sed ut ipsa divina persona fruatur.

Thus the union with the Divine Persons, which is a union by way of knowledge and love,[4] is a preparation for, and a foretaste of, the Beatific Vision. Again we have the words of St. Thomas :[5] ' Gratia nihil est quam inchoatio gloriae in nobis '—a sentence which lies behind the frequently quoted English phrase : grace is glory in exile, glory is grace at home.[6]

Yet it must be remembered that in this life, even under the divinizing influence of sanctifying grace, we cannot see God directly, as He is in Himself, but only as He is revealed in His effects, as reflected in a glass darkly, *per speculum in aenigmate.* In the Beatific Vision we shall have a different, a new mode of knowledge of God ; a direct, face-to-face vision will supplant faith. We shall see God as He is without any intermediary species. Sanctifying grace is not sufficient to enable us to see God in this way ;[7] our human intellects will need a new gift, a new form, a new instrument of vision—

Quod sane fit per infusionem formae quae vocatur lumen gloriae. Hoc enim lumen elevat mentem beatorum ad statum divinum, expandit mentis capacitatem in immensum, determinat mentem ad videndum Deum, et concurrit simul cum ea in visionis productionem.[8]

The *lumen gloriae* is, therefore, something more, something other than the flowering of the intellectual illumination resulting from sanctifying grace. The *lumen gloriae* is a new power demanded

[1] Cf. Beraza, *De Gratia Christi,* n. 784.
[2] Cf. Hervé, *Man. Th. Dog.,* iii, n. 18.

[3] Ibid. Cf. Arendzen, *The Holy Trinity,* pp. 129-30.
[4] S.T., 2-2, 24, 3.
[5] Cf. Joyce, *The Catholic Doctrine of Grace,* ch. xii.
[6] Granam, *The Love of God,* p. 209.
[7] Beraza, *De Deo Elevante,* n. 72.

to effect the new mode of knowledge, the new level of intellectual operation which will be ours when the soul emerges to its final reward, freed from the entanglements and hindrances of the mortal body. Since, however, the union of knowledge and love achieved by sanctifying grace is an adumbration of the Beatific Vision, it must follow that sanctifying grace is itself, in some true sense, an adumbration of the *lumen gloriae.* But it is a dim and imperfect foreshadowing—a preparatory mode. In *ordine entis* the *lumen gloriae* is a new and distinct power of vision enabling the soul to behold God ' and in beholding to possess the fullness of all Being, all Truth, all Goodness and all Beauty.'[1]

(2) Our correspondent's second question touches on very controverted and mysterious theological territory. It would be highly presumptuous to suggest, or to imagine, that there is any finality in the reply attempted here. The question refers precisely to the relations, logical and causal, between the inhabitation of the Trinity in, and the infusion of the virtue of charity (presumably the reference is to the virtue and not merely to an act of charity) into, the soul at justification. But we must go a little further back to include the infusion of grace in our discussion. The infusion of grace, the infusion of charity and of all the other virtues, the inhabitation of the Trinity, all take place in the same moment of time—the moment of justification. They all are aspects or elements of the wondrous change wrought in the soul of the sinner at that moment. Yet we can make certain distinctions in the sequence of events. It is Thomistic teaching[2] that sanctifying grace is really distinct from the infused virtue of charity. Grace is an entitative habit : it perfects the essence of the soul.[3] Charity is an operative habit which perfects the powers (the will faculty) of the soul. From this it would seem to follow that grace is prior to charity in the logical order. *Prius est esse quam esse tale.* In the ontological order the power to love God by supernatural charity is the highest endowment of the creature.[4] The order of causality between sanctifying grace and the virtue of charity poses the greatest problem. It is accepted[6] that the ultimate disposition for justification is an act of perfect contrition or charity which is elicited under a supernatural influence at the moment of the infusion of sanctifying grace. Theologians are not agreed as to

[1] Joyce, op. cit., p. 250; cf. p. 110.
[2] Cf. *S.T.,* 1-2, 110, 3.
[3] Cf. Tanquerey, op. cit., n. 162.
[4] Cf. Graham, op. cit., p. 96.
[4] Cf. Cone. Tria., Sess. vi, can. 4.

the precise nature of the supernatural influence under which this act is elicited. St. Thomas[1] holds that this last disposition is elicited under the influence of the virtue of charity infused with sanctifying grace. And the difficulty, in this view, is to see how an act can be elicited under the influence of a virtue or grace for the attainment of which the act is an ultimate disposition. Many explanations and illustrations are given to solve this difficulty.[2][3]

A somewhat similar problem arises from an examination of the relations between the inhabitation of the Trinity in the soul, and the infusion thereinto, of the virtue of charity. St. Paul wrote :[5]

Caritas Dei diffusa est in cordibus nostris per Spiritum Sanctum qui datus est nobis.

This text implies that the inhabitation of the Trinity (appropriated to the Holy Ghost) precedes, and is the efficient cause of, the infusion of the virtue of charity. St. Thomas states the implication thus :[4]

Ergo datio Spiritus Sancti praecedit caritatem sicut causa effectum; sed Spiritus Sanctus datur secundum aliquod donum suum; ergo aliquod donum est in nobis quod praecedit caritatem et hoc non videtur esse aliud quam gratia.

For St. Thomas then the order of causality is sanctifying grace *(gratia creata),* the inhabitation of the Trinity, the virtue of charity.[5] Dom Graham writes :[6] 'The unique presence of God in the soul which results from sanctifying grace is, like grace itself, the effect of His love for us rather than our love for Him.'

(3) God is in all things, *et intime,*[7] in a threefold manner; *per potentiam, per praesentiam, per essentiam.*[8] He is the Creator and Conserver. In Him all creatures live, move and are. They are completely subject to His power, ever visible to His all-seeing eyes. All creatures are not merely conserved by Him, but derive their existence and being from Him.[9] His immensity pervades all creation. In the natural order, then, God is intimately

1 S.T., 1-2, 113, 8.
2 Cf. Billot, *De Gratia,* p. 233.
3 Rom. v, 5.
4 *De Veritate,* 27, 2.
5 An analysis of the nature of grace leads to a similar conclusion. The essential and immediate effect of sanctifying grace is to make us *consortes divinae naturae.*
6 Op. cit., p. 205.
7 Cf. St. Thomas, *S.T.,* 1, 8, 1.
8 Ibid., a. 3.
9 Cf. Tanquerey, *The Spiritual Life,* n. 92.

present, as an immanent cause, in the human soul. But in the supernatural order, when the soul is endowed with san. grace, God becomes present to it in a new, a higher and more intimate way, so that He is said to dwell in the soul as in His temple. St. Thomas writes i[1]

Est enim unus communis modus quo Deus est in omnibus rebus per essentiam, potentiam et praesentiam sicut causa in effectibus participantibus bonitatem ipsius. Super istum modum autem communem est unus specialis, qui convenit creaturae rationali in qua Deus dicitur esse sicut cognitum in cognoscente et amatum in amante. Et quia cognoscendo et amando creatura rationalis sua operatione attingit ad ipsum Deum secundum istum specialem modum Deus non solum dicitur esse in creatura rationali sed etiam habitare in ea sicut in templo suo. Sic igitur nullus alius effectus potest esse ratio quod divina persona sit novo modo in creatura rationali nisi gratia gratum faciens.

The new mode of the divine presence in the soul of the just is by way of knowledge and love. As a result of the infusion of sanctifying grace, a new and unique relation is set up between the soul and the Divinity which now dwells substantially within it, and in which the soul is made to share. It is *consors divinae naturae.* Since the soul is a spiritual entity[2] made unto the image of God, since it is endowed with the spiritual faculties of intellect and will, it has an obvious and peculiar potentiality for this new relation. Indeed God's presence by immensity in the soul might be said to be a remote preparation for the higher mode of divine inhabitation which results from sanctifying grace. Dom Graham writes :[3] 'The divine presence by immensity provides the ontological foundation for the new mode of indwelling, but it is grace which supplies the characteristic element wholly distinguishing the second kind of presence from the first.' The characteristic element of the new mode of the divine indwelling is that God is now present in, and with, the soul *sicut cognitum in cognoscente et amatum in amante.* He is present no longer merely as immanent cause but in His intimate nature as an object of knowledge and love in a soul which by grace has participated in the divine nature and is thereby transformed and enabled to embrace the divinity within it in a union of knowledge and love. In heaven this union will be indissoluble and under the illumination of the *lumen gloriae* it will be more perfect and more intense than is possible in this life—where we have to contend with human frailty and where we can know God only in an

[1] *S.T.,* 1, 43, 3.
[2] Cf. St. Thomas, *S.T.,* 1, 93, 4.
[3] Op. cit., p. 213; cf. pp. 210-15; pp. 89-109, for a very helpful discussion of this question.

obscure and dark manner, but in our union with God on earth, charity plays the principal part.[1] The soul in the state of sanctifying grace is united, through charity, with God as with a friend, a beloved guest intimately present. This same charity, which unites us to God here below so that He is present in us *sicut amatum in amante,* will endure in heaven as a principle of a union which will be perfected by the intuitive vision of God. Faith will give way to vision. But charity never passeth away.

EXORCISMS AND POLTERGEISTS

(1) What is the sense of the Church's having an order of exorcists and purporting to give them power over evil spirits if, as it seems, in most cases, the exorcisms are fruitless ?

(2) What are poltergeists ? It is hard to imagine Almighty God allowing angels or the souls of the dead or devils to carry on such pranks—and one wonders if the last mentioned can feel so jolly.

(3) How is it that fakirs and ju-ju men can quell these spirits while our exorcists mostly cannot ?

I know that there is no official Church teaching (which is strange considering that spirit activities have been reported in all ages) but I am sure that many priests would be glad of some discussion of this matter, however unofficial and tentative.

Perplexus.

We regret that we can give only a very inadequate answer to the interesting problems proposed by 'Perplexus.' As he remarks, they are difficult problems, and there is no official Church teaching as to the identity of poltergeists, or as to the nature of poltergeist activities. While we must treat with the greatest reserve the accounts of poltergeist phenomena, and while some of them must clearly be discounted as unreliable and inaccurate —there does seem to be a residue of cases in regard to which the evidence is well authenticated and incontestable. The late Father Thurston, who spent long years in a deep study of the whole question, has expressed[2] himself as satisfied regarding the reality of many of the reported poltergeist phenomena and he has quoted, in support of this, the statements of many others who have closely examined, and even witnessed, the extraordinary happenings in some of the better-known cases.

Poltergeist activities and infestations, though widely separated in time and place, seem, according to the reports available,

[1] Cf. Joyce, op. cit., pp. 113-14.
[2] *Ghosts and Poltergeists,* p. 202.

to follow a more or less definite and consistent pattern. As the name poltergeist indicates, the activities are generally of a noisy and violent character. Physical objects, often of great weight, are thrown around and move in the most eccentric paths, in defiance of all known laws of gravitation. Confusion and disturbance are created, bells are rung, furniture and domestic utensils are upset and broken—but, as a general rule, no physical injury is directly caused to human persons. The phenomena seem to be completely purposeless. They have been described as being, in the main, childish and mischievous and as being calculated to mock and annoy rather than to cause physical injury to the persons who are the recipients of the poltergeist visitations.

To whom or to what are these poltergeist activities due? As we see this question, the only reasonably satisfactory answer is to say that they are due to diabolic agencies, and perhaps particularly to the fallen angels. Yet we realize that this is not an entirely satisfying answer. As Father Thurston remarks,[1] it seems somewhat unreasonable to predicate of diabolic agencies, which are gifted with angelic intellects, the highly ridiculous activities which are so characteristic of poltergeist visitations. But it would be even more unreasonable to attribute these activities to disembodied souls—to the souls of unbaptized children in Limbo, for instance. Disembodied souls, apart from special divine assistance, could not be responsible for the physical phenomena of poltergeist manifestations.[2] We can and, indeed, we must[3] accept that the spirits of the departed do sometimes appear, but only for very important purposes. But we cannot conceive God as intervening specially to help disembodied spirits to throw the crockery about! On the other hand it is accepted teaching[4] that angelic spirits can, without special divine aid, exercise considerable power over material things, and can produce marvellous effects especially by the local movement of material elements. Angelic spirits can even use living bodies, human and animal, as their instruments and can assume human shape. Briefly then, angelic spirits, and naturally we are thinking of the fallen angels here, could, without special divine help, produce the poltergeist phenomena. It seems clear that, for the residue of cases mentioned above, we must resort to some extra-mundane

[1] Ibid., p. 203.
[2] Lepicier, *The Unseen World,* p. 146.
[3] Cf. the Gospel account of the Transfiguration.
[4] Lepicier, op. cit., pp. 57, 60, 62.

explanation—and an explanation regarding which God can have no more than a permissive will. It does not seem possible that all the reported incidents could be due to natural unknown forces, to latent electric or telekinetic dynamisms, or to the special psychical powers of some of those present or associated with the manifestations. But it is interesting, and perhaps revealing, to note that in very many of reported instances, the occurrences of the poltergeist phenomena were somehow connected with, or traceable to, the presence of a particular individual—often a child. This may indicate that the particular individual was being used as a medium for the diabolic activity.

Our correspondent asks why, if the poltergeist phenomena are due to diabolic agencies, the rites of exorcism are not effective to banish the disorder. Father Thurston writes :[1] 'Experience has shown that the exorcism and comminatory rites of the Church are not always, or indeed generally, effective in putting an end to poltergeist disturbances, though they sometimes produce a temporary mitigation. On the other hand, I have come across a few cases in which a special novena or the saying of Mass seems definitely to have got rid of the nuisance.' The exorcisms of the Church, like the other sacramentals, produce their effects *ex opere operantis Ecclesiae* and it is said that since the prayer of the Church, whether it be impetratory or imperative, is always acceptable—the exorcisms should have an infallible effect.[2] Nevertheless there are many obstacles which prevent the attainment of this effect—obstacles may even be placed to prevent the *ex opere operato* efficacy of the sacraments. We know from Sacred Scripture that some of the exorcisms performed by the Apostles were not successful. It is admitted that exorcisms have sometimes been successful in ending poltergeist infestations. Father Thurston notes that other spiritual means were also effective. This can be used as an argument for our view that the agencies responsible for the infestations were diabolic in the particular instances and, if in those, why not in others ? Moreover, the exorcisms in many cases mitigated the poltergeist manifestations—and who can say what imponderable results the exorcisms may have had in every case ? Exorcisms are primarily directed to the spiritual order—only secondarily to physical and observable manifestations. As a matter of interest we may note here that Father Thurston states in the Appendix

[1] Op. cit., p. 203.
[2] Cf. Prümmer, *Manuale Th. Mor.,* iii, n. 92.

to *Ghosts and Poltergeists*[1] th
any rite for the exorcism of places, but only for the exorcism of persons possessed. But it seems to us that the exorcism of Leo XIII, given in Titulus XI, Caput III, is admirably suited for the exorcism of places. It is entitled *Exorcismus in Satanam et Angelos Apostaticos.* The prayers of this rite are particularly appropriate for cases of genuine poltergeist infestation.

We do not know how far it is true that fakirs and ju-ju men can quell genuine manifestations of the poltergeists. And in so far as it is true, we cannot offer any convincing explanation as to how it is done. But, the thought occurs, perhaps it may be a case of setting a spirit to catch, or rather to banish, a spirit. The fallen angels are not immune from envy. They have not purged their pride and prejudice.

THE PRIVILEGES OF ST. JOSEPH

Would you please comment on the following questions : (i) Is it permissible to hold, as a private belief, that St. Joseph was sanctified in the womb? (ii) May one hold, again as a private belief, that St. Joseph was assumed, body and soul, into heaven, after the completion of the Redemption? While there is an abundance of spiritual literature on St. Joseph, works for the educated laity in which there is formal theological treatment of his sanctity and privileges must be rare and I, at least, know of none. If St. Joseph, by reason of his office, is the greatest of all the saints, after Our Lady, he should, on general principles, have been sanctified in the womb as the prophet Jeremias and St. John the Baptist were. On the same principles, the Christian mind is easily attuned to regard St. Joseph as having received the privilege of a delayed assumption, body and soul, into heaven some time after the Redemption was accomplished. According to St. Matthew's Gospel (xxvii, 52-53) after the death of Christ, ' the graves were opened and many bodies of the saints who had slept arose and coming out of the tombs after His Resurrection, came into the Holy City and appeared to many.' May we not assume that St. Joseph was amongst the many who arose and that he was afterwards assumed, body and soul, into heaven? In other words, may we not hold that St. Joseph had privileges somewhat analogous to those of Our Lady? Hers were the Divine Maternity, the Immaculate Conception and immediate Corporeal Assumption. St. Joseph's were the Foster-Fatherhood of Christ, Sanctification in the womb and delayed Corporeal Assumption.

Layman.

[1] p. 205.

It is true that there is comparatively little theological discussion of the prerogatives of St. Joseph. He was pre-eminently a saint of the hidden ways of humility and obscurity. The reliable sources of our knowledge concerning the life of the saint are the early chapters of the Gospels of St. Matthew and St. Luke. And the last mention of St. Joseph in these sources occurs when Jesus was only twelve years old—that is, in reference to the finding of the Divine Child among the Jewish doctors of the law in the Temple.[1] There is abundant, though unreliable, reference to St. Joseph in the apocryphal literature.[2] In the patristic writings there is, indeed, mention of the sanctity of the saint and of devotion to him, especially in the East.[3] But it was not until comparatively recent times—during the pontificate of Pope Sixtus IV (1471-1484)—that his feast-day, 19th March, was introduced into the calendar of the universal Church. Subsequently, however, there was a tremendous impetus in devotion to the saint. The status of his feast was raised to double rite, and was made a day of obligation. The name of St. Joseph was added to the Litany of the Saints. A second feast-day—the feast of the Patronage of St. Joseph[4]—was added, and extended to the universal Church, by Pope Pius IX—who also declared the saint Patron of the Catholic Church. In 1909 Pope Pius X approved a litany in honour of St. Joseph.

In Sacred Scripture St. Joseph is described as a 'just man.'[5]* It was, surely, very fitting that he should be such. In the divine plan for the redemption of the human race St. Joseph had a part to play—a sacred and important mission to fulfil.[0] He was, by the design of God, appointed to be the chaste spouse of the Virgin Mother, her real husband, the guardian of her virginity. The Divine Child was born in, though not of, their marriage. St. Joseph was the protector of, and provider for, the Child and His Mother. It is hard to find a word to describe adequately the nature of the fatherhood of St. Joseph in relation to Our Lord—adoptive, or putative, or even foster father are really insufficient. As Billot writes :[7]

Colliges loseph magis de propinquo quam ceteros attigisse Christum, tum quia erga eum omnia quae patris sunt, generatione excepta, ex officio exercuit, tum quia fuit caput illius societatis coniugalis quae ad Christum

[1] Cf. Gospel of St. Luke ii, 42-51.
[2] Cf. C. L. Souvay, *Cath. Encycl.,* viii, sub v., Joseph, p. 504.
[3] Cf. St. John Chrysostom, *P.G.,* 57, 47.
[4] Pope Pius XII replaced this feast by that of St. Joseph the Worker on 1st May.
[4] Matt, i, 19.
[•] Cf. Encycl. *Quanquam pluries,* Pope Leo XIII, 15th August, 1889.
[7] *De Verbo Incarnate,* p. 400.

suscipiendum et educandum fuit directe ordinata. Ex quo apparuit quod non debet dici loseph vitricus vel pater adoptivus Christi. . . Ceterum cum casus sit omnino sui generis et prorsus singularis, non est in vocabulo humano nomen quo talis relatio significetur.

To St. Joseph was confided knowledge of the mysterious fact of the Incarnation—a mystery which was to be hidden from the world until Christ revealed Himself, in His public life, as the Son of God.[1] Some of the patristic writers have suggested that the marriage of the Blessed Virgin and St. Joseph was a means whereby the fact of the Incarnation would be concealed from the devil:

ut partus eius celaretur diabolo dum eum putet non de virgine, sed de uxore natum.[2]

St. Joseph was thus the guardian of the hidden life of Christ, and of its mystery, and many writers find in this fact the reason why, when the period of the hidden life was past, St. Joseph disappears from the scene. It is supposed that he died, his mission accomplished, before the beginning of the public life of Our Lord.[3]

As our correspondent suggests, there is a general principle of the divine economy, according to which God prepares, and endows with appropriate graces and virtues, the person whom He has selected for a very special purpose. When writing of the sanctity of the Blessed Virgin, St. Thomas states:[4]

Illos, quos Deus ad aliquid eligit ita praeparat, et disponit, ut ad id ad quod eliguntur, inveniantur idonei.

We may apply this principle to the case of St. Joseph.[5] Indeed, in the absence of any detailed scriptural and traditional evidence, this principle must be the starting-point for our theological deductions regarding the sanctity and privileges of the saint.[6] As we say of the Blessed Virgin that all her privileges and wonderful graces find their ultimate origin and explanation in the fact that she was destined to be the Mother of God—so we can say of St. Joseph that his privileges and graces flow from the special divine mission to which he was called. We can say, moreover, that any privileges and graces which would be necessary for the adequate discharge of his mission may, with full certainty, be predicated of St. Joseph. The sublime and unique nature of his mission, the closeness of his relations with

[1] Cf. A. Michel, *Did. de Thiol. Cath.,* viii, v. Joseph (Saint), c. 1513.
[2] St. Jerome, *P.L.,* 26, 24—cf. St. Thomas, *S.T.,* 3, 29, 1 ad 3.
[3] *Did. de Théol. Cath.,* loc. cit.
[4] *S.T.,* 3, 27, 4.
[5] Cf. Leo XIII, Encycl. *Quanquam plunes.*
[6] Cf. *Did. de Thiol. Cath.,* loc. cit.

Christ, and with the Blessed Virgin, demanded an altogether special preparation and sanctity. And inasmuch as the relations of St. Joseph to Our Lord and His Mother were closer than those of any other saint, it has been said that his sanctity and privileges must have been, in so far as they were necessary for his mission, greater than those given to other saints.[1]

By way of a difficulty against this view, our correspondent refers, in a covering letter, to a statement of Our Lord:[2] 'Amen, I say to you, there hath not risen among them that are born of women a greater than John the Baptist.' This suggests, at first sight, that the Baptist was the greatest of all the saints and this was the interpretation of the text given by some of the Fathers and commentators.[3] But after the tribute to St. John the Baptist just quoted, Our Lord immediately went on to say: 'yet he that is the lesser in the kingdom of heaven is greater than he.' Many writers explain the apparent discrepancy by pointing out that Our Lord praised the Baptist as the precursor, as the last great prophet and representative of the Old Dispensation.[4]

When the theologians come to consider in detail the special privileges and graces which may have been accorded to St. Joseph, they are unanimous that there was no question of his being immaculately conceived.[5] The privilege of immaculate conception was granted to the Blessed Virgin alone. But it is asked whether St. Joseph, like Jeremias and the Baptist, was sanctified in the womb. Theologians are not agreed on their reply to this question. The much more widely held view is that St. Joseph did not have this privilege. There is no scriptural or traditional evidence in favour of the view that he had it. Nor does theological reason furnish any cogent argument. The principle which we quoted earlier entitles us to predicate of St. Joseph any sanctity or privilege which could be regarded as a necessary preparation for the fulfilment of his special mission. But this mission, which really began only with his marriage to the Blessed Virgin, did not require that St. Joseph should have been sanctified in the womb. St. Thomas notes that sanctification in the womb is a very exceptional privilege granted for the utility of others, and that it should not be attributed to anyone unless there be scriptural evidence for doing so.

1 Cf. Hervé, *Manuale Theol. Dog., II,* nn. 675-6.
2 Matt, xi, 11.
3 Cf. *Did. de Thiol. Cath.,* c. 1514—15.
4 Cf. Lagrange, *Évangile selon S. Matthieu,* p. 222.
5 Cf. Hervé, op. cit., n. 677.

Nec est credendum aliquos alios sanctificatos esse in utero, de quibus Scriptura mentionem non facit, quia huiusmodi privilegia gratiae quae dantur aliquibus praeter b gem communem, ordinantur ad utilitatem aliorum . . . quia nulla proveniret ex sanctificatione aliquorum in utero nisi Ecclesiae innotesceret.[1]

Some writers hold that St. Joseph enjoyed the privilege of impeccability[2] or, at least, that he was confirmed in grace and virtue for the whole period of his life. But, once again, there is no solid evidence for this view. It is, of course, possible that St. Joseph received these privileges. We cannot pronounce dogmatically on such points.[3] But it can be said that the privileges just mentioned were not necessary for the full accomplishment of the task to which God had called St. Joseph. It would suffice for this that he was confirmed in grace from the time of his espousals to the Blessed Virgin, and theologians are unanimous that this was so.[4]* It is also the unanimously accepted opinion that St. Joseph observed virginity all his life and that the references in the apocryphal writings to a marriage prior to that with Our Lady are not reliable—though some of the Fathers seemed to think that they were.[9]

There can be no doubting that St. Joseph died a happy and peaceful death—assisted to the end, it is piously believed, by Jesus and Mary." Some theologians[7] hold that, after the Resurrection of Christ, St. Joseph was assumed, body and soul, into heaven; that he was among those, mentioned in the Gospel text quoted by our correspondent, who arose and came out of their tombs. It is pointed out by these theologians that it is only fitting that St. Joseph should be accorded this privilege of corporeal assumption so that he might be fully associated with Our Lady in the glory of heaven. Yet it must again be said that this privilege, however fitting it might seem, was not necessary for the adequate fulfilment of the mission of St. Joseph. Moreover, it is interesting to note that various interpretations are given by the writers of the manner and the meaning of the corporeal resurrection of the many saints recorded by St. Matthew. Some say that this resurrection was absolute and

[1] *S.T.*, 3, 27, 6; cf. Suarez, *De Mysteriis Vitae Christi*, d. 8, s. 2, n. 6.

[2] "Affirmer de St. Joseph comme de Marie l'impeccabilité absolue, c'est-à-dire l'impossibilité morale de pécher, serait à coup sûr excessif. Mais peut-on affirmer, que vu l'abondance de grâces . . . St. Joseph posséda l'impeccancc du fait? . . . Les avis sont partagés à ce sujet. A. Michel, *Did. de Thiol. Cath.*, loc. cit.

[3] Cf. Billot, *De gratia*, p. 106.

[4] Cf. Hervé, loc. cit.

[6] Cf. *Cath. Encycl.*, loc. cit.

* St. Joseph is the patron of a happy death.

[7] Cf. Suarez, *In S.T.*, q. 29, d. 7.

final, and that the dead who then arose did not have to die again but entered, body and soul, into the glory of heaven. This was the view of St. Thomas in his *Commentary on the Sentences,*[1] but, later, in his *Summa,*[2] he states that the reasons for the contrary view—that those who arose had to die again—seem much stronger :

> De illis qui resurrexerunt cum Christo duplex est opinio, quidam enim asserunt quod redierunt ad vitam tamquam non iterum morituri. . . . Augustinus sentire videtur quod resurrexerunt iterum morituri . . . ; rationes Augustini multo eficaciores videntur.

This *résumé of* the theological teaching on the privileges of St. Joseph may be of interest to our readers, especially in view of the scant treatment which the subject receives in the generally available literature. In any case we thought it well to give the *résumé* as a background to direct replies to our correspondent's questions. From what has been written it is clear that one may hold, as a private belief, that St. Joseph was sanctified in the womb. But it must be repeated that there is little solid positive evidence for this view. One may also hold, as a private belief, that St. Joseph was one of the saints whose body rose from the grave, after the death of Christ, and was afterwards assumed into heaven. Such beliefs must be classed as purely pious. They are not any part of defined teaching. They are not of divine faith ; there is no evidence for them in the sources of Revelation. They are not theologically certain. Indeed, the weight of theological argument seems to lie against them.

THE KINGSHIP OF CHRIST

Maritain (*The Things that are not Caesar's,* p. 184) writes : 'The temporal kingship of Christ has its proximate foundation in His infused knowledge.' I can well see that knowledge is a *sine qua non* of just and efficient rule. But how can Christ's infused knowledge be said to be the proximate foundation of His kingship? A little elaboration of the whole question would confer a great favour.

Oneratus.

The priesthood and the Kingship of Christ are two aspects of His universal headship over created things. Suarez[3] has well said that ' to the dignity of Christ as Head may be traced His power as Lawgiver, as the Founder of the Church, His power to

[1] L. 4, d. 42, q. 1, a. 3.
[2] 3, 53, 3.
[3] T. 17, in q. 8, d.^23.

enlighten and to sanctify His members. The prerogative of Head shows that Christ is not alone Redeemer and Sanctifier but also High Priest, King, Lawgiver and Teacher.' This prerogative belongs to Christ in virtue of the hypostatic union. St. Thomas, in an article[1] on Christ as Head of the Church, points to the appropriateness of attributing to Him the dignities of headship. He has, in relation to His members, the threefold superiority of the head, superiority of position, perfection and of power. Christ is Head of all creation but He has, in a special manner, headship over men. God has ' subjected all things under his feet and hath made him head over all the church.'[2] Later[3] St. Thomas asks whether headship of the Church is the exclusive privilege of Christ. In the course of an affirmative reply, it is pointed out that the head has a twofold influence on the members. It has an interior or vital influence by which it causes movement and sensation, and an exterior influence by which it directs and rules external actions. Christ exercises this twofold influence on His members. The interior vital influx of graces comes from Christ and from Him alone. (As God He can give grace authoritatively, as man instrumentally—His human nature is the conjoined grace-giving instrument of His divinity.[4]) This interior influence of grace may be regarded as part of the function of Christ's spiritual kingship, but it is more appropriately assigned as the special province of His priesthood.[5] It is a consequence of the hypostatic union. Its proximate source is the capital grace possessed by Christ in virtue of that union. Christ as man has habitual grace ' in the plenitude of its perfection and in the perfection of its plenitude ' so that He is not merely pre-eminently holy Himself but is the source of all grace and holiness in others. This fullness of grace which overflows from Christ to sanctify men is called capital grace.

' Christ also exercises an external guidance or rule over creatures. This prerogative of rule is the function of His kingship. It is absolutely universal—admitting no limits of place, time or state. It is spiritual and temporal. It belongs to Christ in His own right. It may be shared, in a limited manner, by spiritual and temporal rulers.[6] Pope Pius XI, in his encyclical *Quas Primas,*[7] elaborates more fully this doctrine of Christ's

[1] St. Thomas, *S.T.* 3,8, a. I.
[2] Eph. i, 22.
[3] Loc. cit., a. 6.
[4] Cf. St. Thomas, 3, 62, a. 5, ad 1 and *64,* a. 3.
[5] Cf. Maritain, *The Things that are not Caesar's,* p. 7.
[6] Cf Fahey, *The Mystical Body of Christ in the Modern World,* p. 4.
[7] 11 December, 1925. *A.A.S.,* xvii, (1925), p. 593 et seq.

kingship. He states that Christ is called King in a metaphorical sense by reason of His supreme excellence and surpassing pre-eminence among all created things. But that is not all. The Holy Father goes on to show that the name king, in a literal sense, and kingly powers, are the prerogatives of Christ as man. Christ's kingship is founded upon the ineffable hypostatic union by virtue of which He has power over all creatures. He is King by natural right, and also by acquired right as a result of His redemptive work. His sovereign power is threefold : legislative, judicial and executive. The kingdom is, in a special manner, spiritual, but 'he would be guilty of shameful error who would deny to Christ as man authority over civil affairs, no matter what their nature, since, by virtue of the absolute dominion over all creatures which He holds from the Father, all things are in His power.' His empire embraces all men. In the liturgy Christ's Kingdom is described as

> Aeternum et universale regnum . . . regnum veritatis et vitae, regnum sanctitatis et gratiae, regnum justitiae amoris et pacis.[1]

The hypostatic union is the great fundamental fact from which all Christ's wonderful prerogatives derive. They all look back to that mysterious union of a divine and human nature in one divine person as to their fount and source. And not least, as we have seen, do Christ's kingly powers thus look back. But in considering their more proximate source—as we have considered the more proximate source of His priestly powers—we must remember that Christ's kingdom is not a mere abstraction but something concrete and actual ; that the prerogative of kingship is not a purely passive pre-eminence, not a static potency but a dynamic force intelligently governing all creatures and directing them, each in accordance with its nature, to a known appointed end ; an Intelligence constantly expressing itself in legislative, judicial and executive functions. This vast kingship in act, this intelligent guidance and rule of all creatures must be founded upon knowledge[2] that is commensurate with the task. It is thus said to be an immediate derivative from Christ's directly infused knowledge—that knowledge in virtue of which He knows as man

> universalia et omnia cxistentia singularia, naturalia et supernaturalia, praeterita, praesentia et futura.[3]

1 Preface of Mass of Christ the King.

2 Cf. St. Thomas *S.T.* 3, q. 58 ; cf. The Aristotelian notion that the philosopher should be the ruler.

3 Cohalan, *De Incarnatione*, p. 155.

Only such universal knowlcdy could serve as a foundation for the absolutely universal kingship which is Christ's. The same truth might be expressed thus Christ's kingship is the execution of God's eternal plan—the

ratio divinae sapientiae secundum quod est directiva omnium actuum et motionum.

(This plan of the Divine Intelligence is the exemplary, directive and efficient cause of all kingly and legislative power.) The infused knowledge given to Christ unfolded for Him as man the existence and nature of this vast plan given to Him to execute as King—so that His kingship depends immediately upon His infused knowledge.

DID THE BODY OF THE DEAD CHRIST SUFFER CORRUPTION ?

In a pamphlet on the Holy Shroud (reprinted from *Perpetual Help,* March, 1850, published with ecclesiastical approval) the following occurs : ' The doctors agree that this secretion indicates the first stage of decomposition. There is no real theological difficulty about this, despite a general impression . . . even among theologians. As the death of Christ was the result of natural causes, so was His dead body subject to the operation of natural causes until the moment of His Resurrection. Only at His Resurrection did He assume the incorruptibility of a glorified body.'

Would you kindly comment ?

S. R.

It is Catholic teaching, vouched for by the express statements of Sacred Scripture, that Christ really died.[1] *His death, like* all human death, consisted essentially in the separation of His soul from His body and the consequent total cessation of *all* the vital bodily functions. When these functions cease, the blood, by a connatural process, gradually coagulates and the red corpuscles separate from the serum. We may correctly speak of the cessation of the vital bodily functions as corruption—the corruption of death. In the normal course this *corruption* is the prelude to the further stage of putrefaction which is the dissolution of the dead body into its component elements. It must be admitted that Christ's body underwent all the essential and immediate consequences of death ; in other words, that it really suffered the corruption of death. To assert otherwise

[1] Cf St. Thomas, *S.T.,* 3, 50, 4; Billot, *De I'erbo Incarnato,* The. lv.

would be to suggest that Christ did not really die. But, on the other hand, inasmuch as Christ's divinity remained united with His body even in death,' we must hold, in accordance with the teaching of Scripture, that this body was preserved from the further degree of corruption described as putrefaction.[3] St. Thomas writes:[4]

> Si autem diceretur quod corpus Christi mortuum totaliter idem remaneret, sequeretur quod non esset corruptum corruptione dico mortis: quod est haeresis Gaianitarum.

He then quotes, with approval, St. John Damascene's explanation of the twofold signification of the term corruption:

> Corruptionis nomen duo significat: uno modo separationem animae e corpore et alia huiusmodi; alio modo perfectam dissolutionem in elementa; ergo incorruptibile dicere corpus Domini, secundum lulianum et Gaianum, secundum primum corruptionis modum ante resurrectionem, est impium: quia corpus Christi non esset consubstantiale nobis nec in veritate mortuum esset, nec secundum veritatem salvati essemus: secundo autem modo corpus Christi fuit incorruptum.[4]

The commentators[5]* are not agreed as to whether the flow of blood and water from the pierced side of Christ was a natural or miraculous occurrence. St. John[6] solemnly attests, as an eye-witness, to the truth of the fact that blood and water did flow. Many writers see in the emphatic manner of this attestation an argument that the flow was miraculous, and different symbolic interpretations of the phenomenon are given.[7] But it seems possible to hold that the flow of water, as well as of blood, was natural, especially when account is taken of the nature of the sufferings which preceded Christ's death and of the direction in which, in all probability, His side was pierced. [8] Blood from the greatly engorged veins, pulmonary vessels and dilated right side of the heart, together with water from the acutely dilated stomach, would flow in abundance.'[9] Another

1 Cf. St. Thomas, op. cit., 3, 50, 2.

2 Billot, loc. cit., § 2, writes: ' Insuper notandum quod Christo iam constituto extra statum viae, debuit sepultura ista esse omni modo honorifica ex parte divinitatis unitae, in cuius virtute corpus fuit praeservatum ab omni putredine. . . .'

3 Op. cit., 3, 50, 5.

4 *De fide orthodoxa,* l. 3, c. 28.

5 Cf. MacRory, *The Gospel of St. John,* p. 339.

6 Evang., xix, 34-5.

7 Cf. Lagrange, *Saint Jean,* p. 499: ' Précisément parce qu'il (S. Jean) regarde le fait comme miraculeux et qu'il en atteste la réalité, on n'a pas le droit de dire qu'il n'a qu'une valeur symbolique. . . Il n'est pas aisé de définir ce symbole et les Pères ont proposé de nombreuses explications.' Cf. MacRory, op. cit., p. 340.

8 Cf. Dr. J. L. Cameron, 'How Our Lord died—A Surgeon examines the Gospel Narrative,' *Irish Ecclesiastical Record,* lxxv (1951), p. 241.

natural explanation, mentioned by some writers, is that the flow of blood and water was due to the fact that the blood had already separated into red corpusclesand serum'—a separation which, as has been noted, follows connaturally on the cessation of the vital bodily functions. But this explanation is less likely because the time which elapsed between Christ's death and the piercing of His side was not sufficiently long to allow, in any complete stage, the suggested separation of the blood components. Of course this process may have commenced and a small quantity of serum may have developed.

Whether or not the flow of water with blood from the side of the dead Christ be physiological evidence—as some take it to be—of the reality of His death, it is certainly not a proof that any process of putrefaction had begun. Consequently, the wording of the passage quoted by our correspondent is, in some respects at least, misleading and inaccurate. The term 'decomposition' is usually taken as being synonymous with putrefaction, and in this sense it may not be predicated of the dead body of Christ. The death of Christ was the result of natural causes which led to the total cessation of all the vital bodily functions. But the dead body of Christ was preserved from the subsequent phase of putrefaction which is not at all an essential element of real somatic death. In other words, the operation, subsequent to death, of the natural causes which would involve putrefaction was suspended in the case of Christ's body. Some of the saints' bodies have been miraculously preserved from putrefaction. Even apart from the statements of Scripture, it would seem eminently reasonable and fitting to hold, as has been traditionally held, that the dead body of Christ, in which His divinity continued to dwell, was preserved from the processes of putrefaction.[1] This preservation was foretold and confirmed in Sacred Scripture. It was foretold by the prophet David :[3] 'Thou wilt not give thy holy one to see corruption.' St Peter recalls these words of David and applies them to the Resurrection of Our Lord : '*Foreseeing* this he (David) spoke of the Resurrection of Christ. For neither was He left in hell, neither did His flesh see corruption.'[4] And St. Paul, likewise recalling David's prophecy, says 'He whom

[1] Cf. MacRory, op. cit., p. 339.

[2] Cf. Billot, op. cit., note 1, 'Corpus Christi . . . fuit ab iniuria mortis praeservatum immune.'

[3] Psalm xv, 10.

[4] Acts ii, 31.

[6] Acts xiii, 37.

God raised from the dead saw no corruption.' It seems to us, however, that the final sentence of the passage quoted by our correspondent may stand, in the sense that only at His Resurrection did Christ's body assume the precise mode of incorruptibility which is proper to a glorified body. But this is not an admission that, prior to His Resurrection, Christ's body was subject to, or was not preserved from, the corruption of putrefactive processes.

DID OUR BLESSED LADY DIE?

I would be grateful for your opinion on the question : Did Our Blessed Lady die ? ' It is defined that she was assumed body and soul into heaven. Could one state that it is more in accordance with this definition to hold that Our Lady was already dead when the Assumption took place ?

Hibernicus.

It would clearly be impossible to give here any very full discussion of the question raised by ' Hibernicus.' The question of Our Lady's death has been discussed and disputed over the centuries, and more particularly and more keenly in recent times since the definition of the dogmas of the Immaculate Conception and the Assumption.

It is admitted by all that there is little reference in the early patristic writings to the death or burial-place of Our Lady.[1] And the references usually invoked are far from conclusive or compelling. Yet, by the scholastic period, the view had come to be firmly and widely accepted that Our Lady did really die. It was claimed that this view accorded best with other points of Mariology. Mary was a creature with a passible and mortal body and was, therefore, *per se,* subject to the universal law of death which encompassed even Christ in virtue of His human nature.[2] And since Christ died, it was fitting that Our Lady should die also in order to complete her assimilation to her Divine Son, and to demonstrate her co-operation and association with His work. It was thought too, again as in the case of Christ,

[1] Cf. Roschini, *Did Our Lady Die ? ' *Irish Ecclesiastical Record,* lxxx (1953), pp. 74-80.

[2] In the Apostolic Constitution — *Munificentissimus Deus* — we read : ' Siquidem christifideles . . . a Sacris Litteris didicere Virginem Mariam per terrestrem suam peregrinationem vitam egisse sollicitudinibus, angustiis doloribus affectam. . . . Parique modo haud difficile iisdem fuit assentiri magnam etiam Dei Matrem quemadmodum iam Unigenam suum ex hac vita decessisse.'

that death was an essential prelude to resurrection and glorification. Thus the question of Our Lady's death was linked up with her Assumption. Nevertheless, at every period there were dissenting voices. There were some writers who held that Mary did not die, that her sinless soul was never separated from her sinless body, that she was, by special privilege, or by an extension or corollary of her special privileges, exempted from the universal law of death. This minority view gathered strength after the definition of the dogma of the Immaculate Conception. By a singular privilege of grace Mary was, from the first moment of her conception, preserved free from all taint and guilt of original sin. It was this sin that brought death into the world, and since Our Lady was exempt from the law of original sin it would fittingly follow that she should be likewise exempted from the law of death which was a direct consequence of the sin.

The whole question of Our Lady's death is brilliantly discussed in a work published in 1944, *La Mort et L'Assomption De La Sainte Vierge.*[1] The author, Father M. Jugie, one of the foremost Mariologists of our times, marshals all the arguments and objections, historical, theological and liturgical. His conclusion is that there is no decisive proof that Our Lady died. Father Jugie personally favours the view that Mary did not die, and proposes many suasory reasons which point to that conclusion : ' raisons qui rendent plausible l'immortalité de fait de la Mère de Dieu.'[2] Among these reasons are[3]: Mary's right to escape death, a right based upon her Immaculate Conception ; the difficulty of finding a reasonable cause for Mary's death after the achievement of Calvary ; the uselessness of her death if it was to be followed immediately by her resurrection and glorification ; she should share the privilege of the just who are living at the last day : they will not die, etc. Yet our author concludes :[4]

> Voilà les raisons qui nous sont venues à l'esprit en jouant le rôle d'un théologien partisan de l'immortalité de fait de la Sainte Vierge. Mais il ne s'agit que d'un rôle ; car nous n'entendons nullement décider si Marie est morte ou si elle est restée immortelle. Pour décider il faudrait avoir des preuves *déciswes* en faveur de l'une des deux thèses ou, si l'on veut, des deux hypothèses. Or nous avons montré que ces preuves manquent aussi bien pour l'une que pour l'autre. Quant aux raisons de convenance que l'on peut faire valoir en faveur de chacune d'elles, nous venons de les exposer sans prétendre avoir épuisé le sujet. Au lecteur de juger de leur valeur.

[1] Biblioteca Apostolica Vaticana, Città Del Vaticano.

[2] p. 569.

[3] pp. 569-80.

[4] p. 582.

Father Jugie wrote before the definition of the dogma of the Assumption. The question naturally arises, it is the question uppermost in our correspondent's mind, whether this solemn definition has thrown any new light on the question of Our Lady's death. The dogma defined was that, 'the Immaculate Mother of God, Mary ever Virgin, having completed the course of her earthly life, was assumed body and soul to heavenly glory.'[1] This definition avoids, and beyond doubt deliberately, any mention of the death of Our Lady. It refers to what happened on the completion of the course of her earthly life—*expleto terrestris vitae cursu.* This is a neutral phrase: it does not give any indication as to how the course of Our Lady's earthly life was completed. Nor can we find in the Apostolic Constitution, which enshrines the definition, any statement suggesting the view that Our Lady really died as the more acceptable. Indeed, it can be argued that the document of the definition demonstrates that the death of the Blessed Virgin was not an essential prerequisite of her Assumption. In other words, her death and her Assumption can be considered separately and independently—though, as Jugie notes,[2] these two facts were inextricably associated in the discussion of the earlier theologians. The definition prescinds from any decision on the question of Mary's death. This question remains open for free discussion among the theologians. The doctrine of the Assumption must be accepted on divine and Catholic faith. It can, perhaps, be argued further that, in its emphasis on the very close connection between the privileges of the Immaculate Conception and the Assumption of Our Lady,[3] the Apostolic Constitution suggests her freedom not merely from original sin, but also from the consequence of that sin, namely death.[4]

To reply directly, then, to our correspondent's final question: in our view, it cannot be stated that it is more in accordance with the definition to hold that Our Lady died before her Assumption. At a minimum, it is equally in accordance with the definition to hold that Our Lady did not die at all.

[1] *A.A.S.,* xlii (1950), 770.
[2] Op. cit., p. 511.
[3] 'Arctissime enim duo privilegia inter se connectuntur.'
[4] Cf. Roschini, art. cit., p. 88.

THE DEPOSIT OF FAITH AND THE DOGMA OF THE ASSUMPTION

Would you please be kind enough to deal with the following query ? It is the teaching of the Church that all Revelation ceased with Christ and the Apostles. As far as the Dogma of the Assumption is concerned, is it permitted to hold that St. John alone was witness to the event, and that his witness, conveyed to the Church and handed down by her, satisfies the teaching that all Revelation ceased with Christ and His Apostles ? The suggestion is that prophetical knowledge of the Assumption (using the word prophetical in its restricted meaning of knowing the future) would not suffice, since all deposited truth would have to be a *fait accompli.* And if every Apostle was a witness of Mary's Assumption, this would push forward the event to precede the slaying of St. James by Herod. In that case, we should expect St. Luke to refer to it in the Acts of the Apostles.

Layman.

It is the teaching of Catholic theology that the transmission of the economy of Christian Revelation ceased with the death of the last of the Apostles.[1] The Deposit of Faith was then complete. The successors of the Apostles were not to be the recipients of new and further revelations. Their function was, and is, in the words of the Vatican Council, holily to guard and faithfully to expound, under the guidance of the Holy Spirit, the Revelation or Deposit of Faith handed down by the Apostles.

Neque enim Petri successoribus Spiritus Sanctus promissus est ut, eo revelante, novam doctrinam patefacerent, sed ut, eo assistente, traditam per Apostolos revelationem seu fidei depositum sancte custodirent et fideliter exponerent.[1]

Since the death of the last of the Apostles, in the person of St. John, there has, therefore, been no new revelation *of* Christian doctrine. But, in the course of the intervening centuries, there has come about a certain progress and development of Catholic teaching in the sense that the content of the Deposit of Faith, entrusted to the Apostles, has been more closely examined and more clearly understood on a number of points.[2] The fuller meaning of the revealed doctrine has been analysed, interpreted, expounded, and sometimes formulated by way of solemn definition. Thus, truths which were merely implicit in Revelation have

[1] Cf. Franzelin, *De Divina Traditione,* Thesis xxii.
[2] Cone. Vat., *De Ecclesia Christi,* cap. 4.
[*] Cf. Van Noort, *De Fontibus Revelationis,* nn. 217 et seq.

become the explicit teaching of the Church. To this development many factors have contributed : the deeper knowledge of the ecclesiastical and ancillary sciences, the constant industrious research of the theologians, the growth in the minds of the pastors of a fuller consciousness of the message of Christianity, the Christian sense of the faithful, even the impact of heresy but, most important and hovering over all, is the constant presence of the Holy Spirit guiding and assisting the teaching Church and guarding it from doctrinal error.[1]

The solemn definition of a doctrine by the supreme ecclesiastical authority is an infallible act ; is, in fact, an infallible assertion that this doctrine is revealed, is contained in the Deposit of Faith. As a rule, this assertion is expressly made in the solemn definition. It was so made in the definition of the Dogma of the Assumption.

> Auctoritate Domini Nostri Iesu Christi, Beatorum Apostolorum Petri et Pauli ac Nostra pronuntiamus, declaramus et definimus divinitus revelatum dogma esse : Immaculatam Deiparam semper Virginem Mariam, expicto terrestris vitae cursu, fuisse corpore et anima ad caelestem gloriam assumptam.[2]

Thus, we have now a solemn and infallible assurance for the truth of the doctrine of the Blessed Virgin's corporeal assumption into heaven and for the fact that this doctrine is contained in Divine Revelation—which was completed at the death of the last of the Apostles. In the Apostolic Constitution[3] which gives the definition of the Dogma of the Assumption, Pope Pius XII traced the history of the doctrine in the liturgy of the Church, in the writings of the Fathers and of the theologians, in the pastoral teaching and in the belief of the faithful, until it emerged as a truth taught as part of Revelation by the ordinary and universal *magisterium* of the Church. He referred to many texts of Sacred Scripture in which ecclesiastical writers and theologians down the centuries have seen, at least by implication, a reference to the doctrine of Mary's Assumption. All the arguments of the Fathers and theologians are based ultimately on Sacred Scripture, which portrays the Blessed Virgin as most intimately associated with her Divine Son, and as constantly sharing His destiny. It is pointed out that the Assumption is the logical corollary of Mary's unique dignity as the Mother of God, and of her Immaculate Conception. Mary is the new Eve most closely united with the new Adam

1 Ibid., n. 232.
2 *A.A.S.*, xlii, (1950) p. 773.
3 Ibid., pp. 757-73.

in the struggle presignified in Genesis[1] and in the victory won over sin and death and crowned by corporeal glorification.

Idcirco augusta Dei Mater, Iesu Christo, inde ab omni aeternitate, ' uno eodemque decreto ' praedestinationis, arcano modo coniuncta, immaculata in suo conceptu, in divina maternitate sua integerrima virgo, generosa Divini Redemptoris socia, qui plenum de peccato ciusque consectariis deportavit triumphum, id tandem assecuta est, quasi supremam suorum privilegiorum coronam, ut a sepulcri corruptione servaretur immunis, utque quemadmodum iam Filius suus devicta morte, corpore et anima ad supremam Caeli gloriam eveheretur, ubi Regina refulgeret ad eiusdem sui Filii dexteram, immortalis saeculorum Regis.

The Pope did not set out in precise terms the manner in which the doctrine of the Assumption is contained in Revelation. But his argument seems to suggest that there is question of a truth implicitly taught in the inspired writings. A doctrine is implicitly revealed when it is contained, physically, logically or metaphysically, in another truth which is revealed explicitly, that is, in clear terms.[3] Though the implicit content of Revelation may be fully seen only after a long passage of time, this content is there from the beginning in the truths revealed explicitly. It is there as a part is in a whole. The syllogism, if we may call it so, whereby it is reached, is purely expository or analytic. There is question, then, only of the fuller understanding of the implications of the explicit statements of Revelation. When, therefore, it is said that the doctrine of Mary's Assumption is implicitly revealed, it is meant that this doctrine flows from a fuller consideration of Mary's status and prerogatives which are explicitly set forth by the sacred writers. We have not any clear and explicit statement of the doctrine of the Assumption in Scripture.[4] But we have texts which writers of every age have taken as signifying this doctrine, and we have explicit statements of Mary's privileges which point *logically to* the truth of her Assumption.

Le silence de i'Ecriture n'est pas absolu. Il fournit un fondement solide à l'affirmation du privilège marial. Il donne le tout où l'on peut trouver la partie.[6]

[1] 3, 15.
[2] *A.A.S.*, vol. cit., p. 772.
[3] Cf. Van Noort, op. cit., nn. 192-3; Jugie, *La Mort et l'Assomption de la Sainte Vierge*, pp. 618-9.
[4] Some writers see an explicit reference to the Assumption in the Apocalypse 12 : 1. In the Apostolic Constitution, *Munificentissimus Deus,* we read 'Ac praeterea scholastici doctores - - - in illa Muliere amicta sole, quam Ioannes Apostolus in insula Patmo contemplatus est, Assumptionem Deiparae *Virginis* significatam viderunt.'
[5] Jugie, op. cit., p. 14.

The doctrine of the Assumption may also have been transmitted, as part of Revelation, as a truth guaranteed by God, by oral tradition coming down from St. John, who alone among the Apostles, very probably, was an eye-witness to, or had immediate knowledge of, the miraculous translation of Mary's body to heaven. Such a tradition would, of course, suffice to place the doctrine of the Assumption within the Deposit of Faith. But St. John need not have been an eye-witness of the taking to heaven of Mary's body. We do not know how this mysterious bodily translation was effected, or when precisely it took place. It is possible even, though unlikely, that St. John's death ante-dated the end of Mary's earthly sojourn. In any case, merely human testimony, say to the fact that Mary's body was seen ascending into heaven, would not constitute Revelation nor would it be proof of the doctrine of the Assumption. The testimony must be based on God's authority. Mary's Assumption into heaven, with her consequent glorification there, is a supernatural fact which can be guaranteed only by Divine Revelation. We have now the solemn definition which means, beyond any questioning or shadow of doubt, that this doctrine is revealed. We do not rely on merely human testimony. We have God's word for it. We must accept it on His authority.

All this is something of a necessary background for a more direct reply to our correspondent's query. We are not sure what precisely is meant in the query by the term ' witness.' It may mean, and it seems to mean, an eye-witness. But, as we have noted, though St. John may have been such a witness of Mary's bodily translation to heaven, this is not at all necessary. St. John was a witness of Divine Revelation. He is a human instrument or organ in its transmission. We have his inspired testimony of that Revelation in his Gospel, in his Epistles and in the Apocalypse. He was also a witness of Revelation inasmuch as he passed on to his disciples in oral teaching very many truths taught by Christ which are not contained in his writings or in the other books of Sacred Scripture. He himself tells us, at the end of his Gospel,[1] that only a fraction of the things done by Christ had been written down and that, if all were written, the world itself would hardly be able to contain the books which would be necessary. Among the doctrines which St. John orally transmitted, as part of Revelation, to his disciples may have been that of Mary's Assumption into heaven. It would, of course, suffice that any one of the Apostles should bear testimony,

[1] 21, 25.

explicitly or implicitly, to the doctrine as revealed. Prophetical knowledge, on the part of the Apostles, of the doctrine of the Assumption, as part of God's Revelation, would also suffice. But this knowledge would have to be passed on to their followers. If, for instance, Christ had told His Apostles that, at the end of her sojourn on earth, His mother would be assumed, body and soul, into heaven, this doctrine would have been revealed even though the event to which it related did not take place for a long time afterwards. And if any of the sacred writers had set down such a statement by Christ the doctrine of the Assumption would have been explicitly revealed in Sacred Scripture.

Again, we are not sure that we understand our correspondent's remark that 'all deposited truths would have to be a *fait accompli.*' As we have explained earlier, the Deposit of Faith was completed at the death of the last of the Apostles. Christian Revelation was then a *fait accompli* and no subsequent additions to it are possible. But, obviously, all the events to which Revelation refers, and which are guaranteed by God's word, need not actually have taken place before the close of Revelation —as, for instance, the last judgment and the resurrection of the just. These events are not yet accomplished facts. To apply these remarks to the doctrine under discussion: it does not matter when, exactly, Mary's Assumption took place. It is remotely possible that the date was subsequent to the death of St. John. The doctrine could have been revealed, *ante eventum,* to the Apostles. And it is now clear that it was, in fact, so revealed implicitly. It is contained, as has been noted, in the doctrine of Mary's Divine Maternity and of her Immaculate Conception. Thus the sacred writers who testify exph'cidy to those revealed doctrines are also implicit witnesses of the revelation of the Assumption. Over and above this implicit testimony, there may have been, there probably was, an explicit *postfactum* oral tradition handed down by St. John. But, we must repeat, the important and indubitable factor about the doctrine of the Assumption is that it is divinely revealed: we have the sure guarantee of God's word for its truth. The question whether the Blessed Virgin passed through the portals *of* death before her Assumption, the date at which the Assumption took place, the problem as to whether St. John and/or others witnessed the actual Assumption—at least that aspect of it which consisted in the translation of Mary's body from earth, the precise manner in which the doctrine is contained in Revelation, are all secondary and are open to discussion. On the last point, however it may be well to say again that the doctrine of the

Assumption is certainly revealed ; that, at a minimum, it is implicitly contained in the written sources of Revelation, and possibly also was explicitly formulated by St. John in the oral testimony of Revelation handed on by him to his disciples. There is a passage in Jugie's monumental work—written before the solemn definition of the Assumption—which gives an excellent summary of the position. We presume permission to quote it as a conclusion to this discussion.

Le dépôt révélé, objet matériel de notre foi, ayant été clos à la mort du dernier apôtre, la question se pose si la doctrine de l'Assomption, non contenue clairement dans les Livres inspirés, n'a pas été transmise oralement au moins par l'apôtre Jean qui, selon l'opinion universellement reçue, fut le dernier des apôtres a quitter cette terre. Le problème est délicat a résoudre. On ne peut douter, semble-t-il, que la Mère de Dieu avait déjà quitté ce monde—nous ne disons pas : était déjà morte—lorsque saint Jean finit sa longue existence. Nous n'avons pas, cependant, de ce fait une certitude absolue. Si Marie avait terminé son existence terrestre après la mort du dernier des apôtres, son assomption glorieuse ne pourrait être considérée comme appartenant explicitement au dépôt révélé. Mais elle pourrait toujours être tenue pour implicitement révélée, en tant que tenue dans d'autres vérités révélées la concernant, comme la maternité divine et l'immaculée conception. . . . Nous pensons que l'apôtre saint Jean a survécu à la *migration,* à l'assomption de Celle que Jésus lui avait confiée pour qu'il la traitât comme un bon fils traite sa mère. Il a dû connaître, dès lors, sans aucun doute, le mystère de son passage de la terre au ciel. C'est par lui, dernier survivant du Collège apostolique, que l'Église primitive a pu être renseignée sur ce mystère. - - -[1]

THE DOGMA OF THE ASSUMPTION AND THE DEATH OF OUR LADY

Anent the discussion as to whether Our Blessed Lady died or did not die before her Assumption, would you point out to me how, in view of the words and terms of the definition of the dogma of the Assumption, there can be the slightest doubt that Our Lady did not die ?

It is defined that ' The Immaculate Mother of God, Mary ever Virgin, having completed the course of her earthly life, was assumed, body and soul, to heavenly glory.'

Turn to the *Summa* of St. Thomas. At 1. 29, a. 1, St. Thomas is justifying the definition of a person given by Boethius : ' Persona est rationalis naturae individua substantia.' The fifth objection reads : ' Anima separata est rationalis naturae individua substantia : non autem est persona. Inconvenienter ergo persona definitur.' To this objection St. Thomas replies : ' Quod anima est pars humanae speciei. Et ideo licet sit separata, quia tamen retinet naturam unibilitatis non

[1] Op. cit., pp. 585-6.

potest dici substantia individua quae est hypostasis vel substantia prima, sicut nec manus nec quaecumque alia partium hominis. Et sic non competit ei neque definitio personae neque nomen.'

In the definition of her Assumption the name of Mary is used. Mary is the name of a person. If Mary's soul is separated from her body then the name Mary is not, in an accurate theological definition, to be applied to her. Since it is applied to her in the definition it is clear that her soul is not separated from her body—that is, she is assumed as a person and she did not die.

Secondly, the definitions of the Church are the work of the Holy Spirit. The work of God is characterized by simplicity. Simplicity is the rule of the necessary and the sufficient. That is said or done which is necessary to achieve the purpose, but no more is said or done than is sufficient. God does not gild the lily. Let us suppose that Our Lady died before her Assumption. Then two separate events are defined to have taken place : (1) Our Lady's soul was taken up, (2) Our Lady's body was taken up. To define that Our Lady's soul was taken up amounts to no more than a canonization and is unnecessary. The purpose of the definition would be achieved by stating that her body was taken up. As the expression *body and soul* is used we must reject the supposition that Our Lady died.

In the definitions of the Church, as in the canonical scriptures, it is not so much the intention of the defining prelate or the human author that is important ; it is the intention of the Holy Spirit.

G. J. H.

In an earlier reply we discussed the specific question whether it is more in accord with the definition of the Assumption to hold that Our Lady was dead when the Assumption took place. We stated in the course of our reply that the dogmatic definition was not concerned at all with the long-disputed question as to whether Our Lady really died ; that it left this question open to the free discussion of theologians.[1] It is defined that ' *The* Immaculate Mother of God, Mary ever Virgin, on the completion of the course of her earthly life, was assumed, body and soul, to heavenly glory.' There is no obvious indication in this definition whether or not Our Lady had already died when her glorious Assumption took place. We are, indeed, *told* that it took place when she had completed the course of her earthly life, but we are not told how this course ended. In the *Apostolic* Constitution[2] which, prior to giving the definition, outlines the

[1] Cf. Roschini, ' Did Our Lady Die ? ' *Irish Ecclesiastical Record,* Ixxx (1953), pp. 87-8.

[2] *Munificentissimus Deus.* The text of this Apostolic Constitution is given in the *Irish Ecclesiastical Record,* Ixxiv (1950), pp. 547-58.

arguments in favour of the dogma of the Assumption, there are passages which seem to favour the view that Our Lady did not die. There is, for instance, notable emphasis on the close connection between the doctrine of the Immaculate Conception and that of the glorious Assumption. From this connection it might, perhaps, be argued that Our Lady's exemption or preservation from original sin implied also her exemption or preservation from death which entered the world through that sin. But, on the other hand, there are passages, principally quotations, in the Apostolic Constitution which refer to the death of Our Lady. For example, we have the prayer quoted from the Gregorian Sacramentary :

> Veneranda nobis, Domine, huius est dici festivitas, in qua sancta Dei Genetrix mortem subiit temporalem, nec tamen mortis nexibus deprimi potuit. - - -[1]

And we have frequent reference to the close association of Our Lord and Our Lady in the economy of the redemptive plan, and to the parallelism of the pattern of their lives and achievements.[2]

From all this it is surely clear that indications for and against the view that Our Lady died can be found in the Apostolic Constitution which enshrines the definition of the dogma of the Assumption. But these indications, on close examination, more or less cancel out one another and the reader is left with the firm conviction that Pope Pius XII did not wish to give, in fact deliberately avoided giving, any decision on the disputed question. And then when he came to formulate the definition he used, as we have noted already, the neutral phrase *expleto terrestris vitae cursu.* The disputed question of the death of Our Lady has really no immediate relevance to the dogma of the Assumption. We may say that what is defined is that Mary is in the glory of heaven, body and soul, and that she is thus there in virtue of the privilege of her Assumption which followed upon the completion of the course of her earthly life. It is patently clear, we submit, from the text of the Apostolic Constitution and the definition, that the two questions of Our Lady's Assumption and of her death can be considered entirely separately and independently ; that the first is a defined dogma, that the second is open to free discussion.

Despite all this obvious prescinding from a decision on the disputed question of Mary's death, our correspondent claims

[1] Loc. cit., pp. 550-1.
[2] A.A.S., xlii (1950), p. 772, quoted *supra,* p. 531.

that the words and terms used in the definition of the Assumption prove beyond the slightest doubt that she did not die. He advances two arguments for this claim. The first has a philosophic flavour and seems to be highly subtle, but is far from convincing. The second argument, by way of contrast perhaps, is based upon a dubious rule of the simplicity of God's work and is equally unconvincing.

The first argument, as advanced by our correspondent, seems to come to this : the name Mary can be applied only to a person. The disembodied soul is not a person. In using the name Mary in the solemn definition the Holy Father therefore implied that her soul was not separated from her body at the moment of her Assumption and that, consequently, she did not really die. Our correspondent quotes St. Thomas[1] in support of his premise that the disembodied soul is not a person and that it cannot be appropriately designated by a name. But in this latter point he misinterprets the text of St. Thomas. The relevant phrase is :

> Sic non competit ei (i.e. animae separatae) neque definitio personae, neque nomen.

Our correspondent interprets 'nomen' in this passage as meaning a name by which a person is designated, but what St. Thomas means is that the name of person—like the definition of person—cannot be applied to a disembodied soul. The passage quoted might then be more completely read :

> Sic non competit ei neque definido personae, neque nomen personae.

Even if our correspondent's interpretation and argument were valid, we might ask why it was necessary to add the qualification *corpore et anima* in the solemn definition *if the name* Mary *so* sufficiently and so exclusively indicates the person (body and soul) of Our Lady ? This is a particularly urgent question for our correspondent in view of his second argument from simplicity. For he states that 'simplicity is the rule of the necessary and the sufficient.' Leaving all this aside for a moment, let us look at the definition in a practical way. The name Mary is used in the definition. But what other term of reference might more appropriately be used ? How better could Pope Pius XII have clearly expressed the truth which he

[1] Loc. cit. in query. St. Thomas does not formally discuss the doctrine of the Assumption of Our Lady. He accepts as reasonable the teaching that the Assumption took place, for example in *S.T.*, 3, 27, 1, when he writes : 'Sicut tamen August, in semi, de Assumptione ipsius Virginis rationabiliter armimentatur quod cum corpore sit assumpta in coelum. . . .' But he does not say anything in this context of her death.

wished to define ? He was not setting out a point of philosophy, but a solemn statement of a doctrine as of divine and Catholic faith to be believed, under pain of heresy, by all the faithful. As was so eminently fitting in a matter of such import for all, the Pope used ordinary and easily intelligible language. And it was, of course, in the truest sense, the person of Mary who was assumed into heavenly glory—not her soul merely, not her body merely, but the totality, body and soul. They have both been assumed ; they are both present in the glory of heaven. Our correspondent seems to be concerned with the precise order or mode of the act of assumption. The definition is concerned with the *fact* of the Assumption. And it is entirely unwarranted to read into the definition a reference to the order, and a subtlety that obviously were not intended. We do not know how exactly the Assumption took place. We do know, it is now an article of divine and Catholic faith, that it did take place. The manner of the Assumption is God's secret. We can speculate about what may have happened. It may be that, to complete her assimilation to her divine Son,[1] Our Lady was allowed to die, and then, at the moment of the separation of her soul and body (which is the point of somatic death), that God assumed both together into the glory of heaven. It is quite true that, in the reply quoted by our correspondent, St. Thomas states that the definition and name of person arc inappropriately applied to a separated soul. But in the definition of the dogma of the Assumption, even in the hypotheses that Our Lady died, and that the Pope was using terminology in the strictest philosophic sense, there need be no question of being involved in this inappropriate application. As we have just mentioned, the Assumption may have taken place at the moment of the separation of Mary's soul and body, or, possibly, her soul may have rejoined her body after a short period of separation so that both might be assumed together into heavenly glory.

Our correspondent's argument from the simplicity of God's work would prove far too much. In the light of it how, for instance, would he explain the repetitions in Sacred Scripture—in God's own message to mankind ? Moreover, this argument, as we have noted earlier, recoils on our correspondent. Why, we repeat, is there express reference in the definition to the body and soul of Our Lady if their presence is already sufficiently indicated by the use of the name Mary ? In our correspondent's argument this name can refer only to the person, to the united

[1] Cf. The Apostolic Constitution, loc. cit., p. 550.

body and soul, of Our Lady. Perhaps it may be said that a definition stating merely that Mary was assumed to heavenly glory would be an over-subtle way of expressing the dogma. We emphatically agree that it would. But if one invokes, and relies on, strictly philosophic concepts and definitions, plus simplicity in the sense defined in the query, one can hardly cavil at this subtlety. Alternatively, again in the interests of simplicity, of not saying more than is absolutely necessary, why was it not declared merely that Our Lady's body was assumed since to define that 'her soul was taken up is unnecessary'? Our correspondent suggests an analysis of the act of Assumption which, he holds, must be accepted in the hypothesis that Our Lady died. We do not at all agree that this analysis must necessarily be accepted, or that it is the only possible version of what took place. In any case it is always presumptuous to try to corral the acts of God within the temporal and spatial relations and concepts of our earthly activities and existence. And even within the limits of our concepts, there is no need to presuppose, in the hypothesis of Our Lady's death, that two separate acts were required to accomplish the Assumption.

We do not by any means wish to suggest in all this that the view that Our Lady did not die cannot be cogently defended. In our previous reply and in this also we have indicated arguments and sympathy for this view.[1] But we do not think that the arguments advanced by our correspondent have any particular force. Apart from their intrinsic flaws they indicate an attempt to read into the definition of the dogma of the Assumption a meaning that is not there—almost a definition that Our Lady did not die. Let us repeat that the Pope clearly did not wish to decide the question of Our *Lady's death, much less* did he intend to *define* that she did not die. But, *if we rightly* interpret the final paragraph of our correspondent's query, he discounts the intention of the Pope in the matter; at least it is not his intention that is important. Our correspondent suggests that the Pope, *salva reverentia,* without knowing or intending it, may have defined that Mary did not die. Earlier he had said that the definitions of the Church are the work of the *Holy Spirit.* This statement has, of course, a true *meaning. The* Holy Spirit constantly and indefectibly *guides and assists the Church and the Pope in the* work of guarding and expounding the deposit of faith. But it should be added, as the Vaticani

[1] Cf. *Jugie, Mort et l'Assomption de la Sainte Vierge, p.* 569.

Council makes clear,[1] that human effort, inquiry and examination are also necessary.[2] In the final paragraph our correspondent goes much further, and equiparates, particularly in regard to their provenance or authorship, the definitions of the Church with the Sacred Scriptures. Thus he completely confuses the notions of infallibility and inspiration—two distinct and disparate prerogatives. In his solemn definitions on matters of faith and morals, that is, when he speaks *ex cathedra,* the Pope enjoys the prerogative of infallibility. Through the assistance of the Holy Spirit he is safeguarded from error: he cannot solemnly define a doctrine that is false or erroneous. But the definition is his work. He is the principal author. It is his intention that is important. In issuing solemn definitions the Pope is not inspired as were the sacred writers in composing the books of Scripture. Inspiration means that God is the principal author of the inspired work, of the message transmitted. It is God's own message given through a human instrument acting in a human manner. But since God is the principal author of the inspired work here, it is His intention that is of primary importance. Van Noort excellently sums up these various points when he writes :[3]

> Causa efficiens infallibilitatis est *assistentia* Dei aut Spiritus Sancti. Assistentia haec est auxilium inferioris naturae quam revelatio et inspiratio. . . . Assistentia differt a *revelatione,* per quam aliqua doctrina de novo a Deo accipitur. ' Neque enim, ait Cone. Vatie., Petri successoribus Spiritus Sanctus promissus est, ut eo revelante novam doctrinam patefacerent, sed ut eo assistente traditam per apostolos revelationem seu fidei depositum sancte custodirent et fideliter exponerent.' Differt etiam ab *inspiratione,* vi cujus documentum conditum fit verbum Dei, procedens de ore Dei, ita ut Deus sit ejus auctor principalis, homo instrumentalis tantum. At decretum sub assistentia divina conditum est verbum ecclesiae, cujus auctor principalis est papa vel concilium.

It would seem that this confusion of the notions of infallibility and inspiration runs right through our correspondent's second argument.

[1] 'Romani autem Pontifices, prout temporum et rerum conditio suadebat nunc convocatis oecumenicis conciliis aut explorata ecclesiae per orbem dispersae sententia, nunc per synodos particulares, nunc aliis quae divina suppeditabat providentia adhibitis auxiliis, ea tenenda definierunt quae s. Scripturis et Apostolicis Traditionibus consentanea, Deo adiutorc cognoverant.' *Const, de Eccl.,* c. iv.

[2] Van Noort writes: 'Assistentia divina minime superfluum reddit *laborem ac studium humanum,* inquisitionem fontium revelationis cet., imo illam *supponit atque includit.' De Eccl. Christi,* n. 99.

[3] Op. cit., n. 98.

THE CORONATION OR QUEENSHIP OF THE BLESSED VIRGIN

Since the proclamation of the Dogma of the Assumption the question has been frequently asked whether the Coronation of Our Lady is part of the solemnly defined teaching ?

Eugenics.

The dispositive sentence of the Solemn Definition of the Assumption read thus

Pronuntiamus, declaramus et definimus divinitus revelatum dogma esse : Immaculatam Deiparam semper Virginem Mariam, expleto terrestris vitae cursu, fuisse corpore et anima ad coelestem gloriam assumptam.

Clearly, the only dogma defined in this formula is that the Blessed Virgin, on the completion of her earthly life, was assumed body and soul into heavenly glory. In other words, it is the fact, not the manner or mode of the Assumption and glorification, that is solemnly defined. There is no reference to the Coronation of Our Lady in the formula. She is described in it as the Mother of God, ever Virgin, immaculately conceived. Each of these privileges had already been the object of a solemn definition.

It is true, of course, that the doctrine of the Queenship of Our Lady, which presupposes some form of coronation, is part of the teaching of the ordinary and universal *magisterium* of the Church.2 The title of Queen, Queen of heaven, has been from early times, applied to the Blessed Virgin. We find this title in the patristic writings, in the liturgies and in papal documents of every age, but particularly in those of modern times. On the 11th October, 1954, Pope Pius XII issued an encyclical *Ad Caeli Reginam3* in which he outlined the traditional teaching on the Queenship of Our Lady. He describes the teaching as *illa solide probata veritas* and, in order that it might shine more brightly and more manifestly before all, he instituted the feast of Mary the Queen, and ordered it to be celebrated each year in the universal Church on 31st May. In the course of this encyclical the Pope pointed out the twofold foundation of Mary's Queenship: her Divine Maternity and her co-operation with Christ in the work of Redemption and victory over sin and death.

1 Constit. Apost., *Munificentissimus Deus, A.A.S.,* xlii (1950), p. 770. « ' Ce titre de reine de l'univers, de toutes les créatures, sans jamais avoir fait l'objet d'une définition du magistère solennel de l'Église, est proclamé par le magistère ordinaire.' Jugie, *La mort et L'Assumption de la Sainte Vierge,*

P *A.A-S-*, xlvi (1954), pp. 625-40.

Praecipuum, quo regalis Mariae dignitas innititur, principium est divina eius matemitas . . . Attamen Beatissima Virgo Maria non tantum ob divinam suam matcrnitatcm Regina est dicenda sed etiam quia ex Dei voluntate in aeternae salutis nostrae opere eximias babuit partes. . . . lamvcro plena, propria et absoluta significatione unus lesus Christus, Deus et homo, Rex est; attamen Maria quoque, quamvis temperato modo et analogiae ratione, utpotc Christi Dei mater, socia in divini Redemptoris opera et in eius cum hostibus pugna in eiusque super omnes adepta victoria regalem participat dignitatem.[1]

In the explanatory section of the Apostolic Constitution *Munificentissimus Deus,* in which the Dogma of the Assumption is solemnly defined, we read similar statements. Having referred to the mysterious association from eternity of the Blessed Virgin and Christ in one and the same degree of predestination, and having recalled her privileges and her generous co-operation in the work of Redemption the Pope continues:[2]

Augusta Dei Mater - - - id tandem assecuta est, quasi supremam suorum privilegiorum coronam, ut a sepulcri corruptione servaretur immunis, utque, quemadmodum iam Filius suus, devicta morte, corpore et anima ad supernam Caeli gloriam eveheretur, ubi Regina refulgeret ad eiusdem sui Filii dexteram immortalis saeculorum Regis.

In this passage there is, indeed, reference to the Queenly enthronement of Our Lady as an immediate consequence, almost as a part, of her glorious Assumption. But this reference was not included in the formula of the solemn definition.

THE UNIVERSAL MEDIATION OF THE BLESSED VIRGIN—ITS DOCTRINAL STATUS

Would you please say what exactly is the Catholic position regarding the doctrine of the Universal Mediation of the Blessed Virgin Mary? Let me explain the reasons for my request: I am a member of the Legion and I have heard the doctrine frequently and eloquently expounded—so much so that I took it for granted that it was simply part of our Catholic teaching. For years I never heard a doubt expressed. Recently, however, I heard many objections raised against this doctrine by one who left me under no doubt whatever that he at least did not accept it and that he was none the worse Catholic for that. He spoke vehemently of the difficulty—I think impossibility was, in fact, the word he used—of reconciling the Universal Mediation of Mary with the teaching of St. Paul and of all theologians regarding the *oneness* of Christ's mediation, and he also mentioned that the doctrine was irreconcilable with our teaching on the Sacraments. He ended by saying, amongst other things, that all some people seem to

[1] Ibid., pp. 633 and 635.
[2] *A.A.S.,* xlii (1950), pp. 768-9.

want nowadays was some novel form of devotion, and that these new-fangled doctrines were merely a stumbling block to possible converts. I was very much shaken by this outburst from one who is no mere amateur theologian, and I would like to know the exact Catholic teaching and an indication of the answers, I presume there must be answers, to the objections mentioned.

Legionarius.

We sympathize with our correspondent's difficulties, which we may fairly reduce to the form of two questions. Firstly, is the doctrine of the Universal Mediation of the Blessed Virgin defined Catholic doctrine? Secondly, is this doctrine even true? Perhaps, indeed, for completeness we should add a third question: is this doctrine definable?[1] It might be more logical to have put, and to answer the second question before the other two since, obviously, if a doctrine is not true, it can neither be defined nor definable. Nevertheless, we shall take the questions in the order given, which is the order in which our correspondent states his difficulties. We do not propose to attempt to go fully into these questions here. Such an attempt would take us too far afield. And it is not necessary, as a considerable literature touching the doctrine under discussion has grown up in recent years.[2]

The first question for our consideration has been stated thus: Is the doctrine of the Universal Mediation of Mary defined Catholic doctrine? The answer is that it is not. Nor has any censure been passed upon its denial. Juridically, then, it is only a pious belief, the truth of which may freely be discussed by Catholics. It is necessary to add, however, that while juridically a doctrine may only have the status of a pious belief, it may objectively be part of the revealed deposit. Such, for instance, was the position in regard to the doctrine of the Immaculate Conception prior to 1854. Before that date it was not a defined Catholic doctrine, juridically it was a pious belief; though actually, as is stated in the solemn definition,[3] it is contained in the revealed deposit.

[1] When a doctrine is defined, it is proposed for belief as *divinely* revealed. Consequently, in order to be definable a doctrine must be revealed. It may be revealed explicitly or implicitly. And again, implicit revelation may be formal or virtual. Cf. Pierse, *Virtues and Vices,* ch. xxix.

[2] Cf. Continental and other periodicals, 1925-1959. Among fairly recent books in English on this subject cf. Smith, *Mary's Part in our Redemption* · Rigby-Fahey in English translation of Rohellec, *Mary Mother of Divine Grace* · Auger, *The Doctrine of the Mystical Body of Christ.* There is a host of French works, reference to which will be found in most of the above.

[3] Cf. Bull *Ineffabilis, Denz. n. 1502.*

This brings us to the second question : Is the doctrine of the Universal Mediation of Mary true ? We are absolutely convinced that it is. Of it Pope Leo XIII wrote[1] *vere proprieque affirmare licet*—implying certainty. The arguments in favour of the doctrine are, to our mind, convincing. The objections raised against it are for the most part based upon a misunderstanding of the meaning of the doctrine ; and to those not based on such misunderstanding reasonably acceptable answers can be given. Strangely enough, many people seem to think that this doctrine, in order to be true, should give rise to no difficulties. It should scarcely be necessary to recall that there are difficulties associated with all our Catholic doctrines. Many of them are mysteries of the highest order, the full content of which we shall never completely understand. Hence the value and the merit of faith. And, we might add, if Catholic doctrine did not constantly present difficulties, the lines of the Catholic theologian would be laid in pleasant places.

There are very many arguments advanced to prove the truth of the doctrine of the Universal Mediation of the Blessed Virgin.[2]* There seems to be no doubt that this doctrine represents the common teaching of the Church. We find it expressed in the liturgy of the East and the West.[8] It is implicit, and explicit, in many of the general prayers and devotions of the faithful. It is clearly taught by theologians and spiritual writers particularly, though not exclusively, since the Middle Ages. It has been frequently and unequivocally expressed in many statements by all the recent Popes. In 1921 Pope Benedict XV approved a special Mass and Office for the feast of Mary, Mediatrix of all Graces.[4]* It is worthy of note that the object of the feast is doctrinal.[6]* The doctrine of the Universal Mediation of Mary is in perfect accord with the analogy of faith. It fits naturally into the scheme of Redemption. It is based ultimately on Mary's twofold motherhood. She is the Mother of Christ. For this she had been divinely chosen, and endowed with the fullness of every grace. Christ was flesh of her flesh and bone of her bone. He was nurtured, reared and

[1] Encyclical *Octobri Mense* (1891).

[2] We can only mention some of them here and very briefly. We must, for the most part, refer our readers for authorities to the works we have mentioned.

* Cf. Vassall-Phillips, *The Mother of Christ,* ch. xv.

[4] This privilege was granted, through Cardinal Mercier, to all the dioceses of Belgium—and to any other diocese for which it is asked by the Ordinary.

[6] ' L'objet de la fête étant exclusivement doctrinal l'approbation pontificale porte sur cet objet même, à savoir la dispensation de toutes les grâces par les mains de Marie,' Aubron, art. *Nouvelle Révue Thiol.,* Jan., 1938.

prepared by Mary, consciously, we have no doubt, for the Sacrifice of the Cross. She stood at the foot of that Cross, with will and heart perfectly attuned to those of her divine Son, in the great sacrificial act whereby He redeemed the human race. And she is the Mother of men, the Mother of that Mystical Body of which Christ is Head.[1] Motherlike, she is intensely interested and prepared to help, to the limits of her power, her spiritual children. We might, indeed, say in regard to Mary's Universal Mediation as Scotus said of her Immaculate Conception—*potuit, decuit, ergo fecit Deus.* As Leo XIII has written in an Encyclical,[2] I quoted earlier, 'even if Scripture and Tradition had been silent regarding this doctrine it would have been proclaimed by Christian instinct.'

This statement of Pope Leo suggests that the doctrine which we are considering is contained implicitly in the *fontes* of Revelation; that it is not simply a theological conclusion but objectively part of the divine deposit. And that is the view of many theologians. A representative writer[3] has stated that 'the doctrine is contained implicitly in the New Testament and has been expressed in the unbroken Catholic tradition.' While we may not attribute an unwarranted doctrinal precision to the statements of the Fathers we must at the same time read their evidence not merely in the cold light of scientific history but in the light of the living faith of the Church.[4] Thus read we can hear, in the patristic references to the new Eve and in similar figures, the first echoes of a dogmatic tradition which, in the ordinary laws of dogmatic development,[5][6] has become more precise and explicit in the course of ages, and which finds expression to-day in the doctrine that Mary is the Mediatrix of all graces.

It seems to us, then, that this doctrine is not merely true, but, *salvo meliori judicio,* that it is definable.[8] All the conditions for definability seem to be present. It is worthy of note that the history of the doctrine bears a striking resemblance to that of

[1] Cf. Pius X Encyclical, *Ad diem ilium* (1904).

[2] *Octobri Mense.*

[3] Dublanchy, art. 'Marie,' *Diet. Thiol.*, t. 9, c. 2839.

[4] 'En matière de progrès dogmatique, le premier comme *le* dernier mot revient à la foi vivante de l'Église; c'est a sa lumière que le théologien doit scruter les témoignages anciens, c'est à son contact qu'il doit vivifier ses spéculations, et toute théologie qui perd ce contact tend au pur verbalisme, quand ce n'est pas à l'hérésie formelle'—Aubron, art. cit., p. 7.

[6] Cf. Pierse, op. cit., ch. *xxx.*

[8] *Cf.* Cleary, art. *drish Ecclesiastical Record,* May, 1929: 'Can Our Lady's Universal Mediation be Defined?'

the Immaculate Conception.[1] This latter doctrine was defined in due course—though it had been opposed in times past by some of the greatest theologians, by St. Bonaventure, St. Albert the Great, St. Thomas Aquinas, because it was thought to be irreconcilable with die doctrine of Original Sin and universal Redemption. Similarly, in due time, the doctrine of the Universal Mediation of Mary may be defined. There is no denying that an extraordinary interest[2] is being taken in this doctrine in recent years—interest which may be the prelude to a solemn definition. Perhaps, in the wise ways of Providence, following on the consecration of the world to the Immaculate Heart of Mary, a definition of her Universal Mediation may come in our day to a world of weary men, whose faltering and despairing souls need to be reminded and assured of the ever present guidance of a mother's hand and the never failing succour of a mother's prayer. 'This doctrine,' writes Father Bainvel,[3] 'is not merely a truth reached by theological deduction. It is a truth which we may fearlessly consider as part of the deposit of faith. It will be defined in its own day. When and how? Only God knows; but it depends upon us, in a certain measure, to hasten the time.' But whether a definition comes or does not come, whether it comes in the near or distant future, it is clear that the Blessed Virgin plays a constant and essential, though secondary, part in the divine economy whereby the graces of Redemption were won, and are distributed to men.

We have said earlier that many of the objections raised against the doctrine of the Universal Mediation are based upon a misunderstanding of its true meaning. An objection mentioned by our correspondent, namely that it is impossible to reconcile the doctrine of Mary's Universal Mediation with the teaching of St. Paul that Christ is the one and the only Mediator between God and men, is a case in point. It is, indeed, true that Christ is the one and only primary, independent and perfect Mediator. It is He and He alone Who redeemed all men—including the Blessed Virgin, who was redeemed in a more perfect manner than any other human creature.[4] From this it clearly follows that Mary's mediation is not and cannot be regarded as independent or self-supporting. Her Mediation presupposes, and depends entirely upon, the Mediation and

[1] Cf. Van Noort, *De Deo Redemptore,* s. iii, a. 2.

[2] This interest is manifested in the literature and discussion which have sprung up around the doctrine.

[3] *Marie—Mère de grâce,* p. 37.

[4] Cf. Smith, op. cit., chs. i-iv.

Redemption wrought by Christ. There is no question whatsoever of setting Mary upon a level with Christ, no question of putting her mediation on a par with His. Mary stands as Mediatrix between us and Christ—below Christ, far below Him as a creature is below the Creator, yet far above the rest of men because, though a creature, she is the Mother of the Creator. She is, as Suarez puts it,[1] 'the Mediatrix before the Mediator.' Thus, properly understood the doctrine of Mary's Mediation is in no sense in conflict with the teaching of St. Paul. Pius X was not unmindful of the objection under discussion here when he wrote[2] that ' they are led astray by the tricks of the evil one or deceived by false teachings who believe that they can do without the help of Mary. Unfortunate are they who neglect her under the pretext of honouring Jesus Christ, as if one could find the Child apart from His Mother.'

There is no doubt that Mary's Mediation for us in heaven is at least by way of intercession.[3] Nor can it be questioned that, in view of her wonderful graces and merit,[4] that her power of intercession before the throne of God is immeasurably great. Accordingly her mediation can extend to all graces. If it be admitted, and who can deny it, that Mary can intercede for one grace, there seems to be no adequate reason for denying that she may act as universal Mediatrix. There is no change implied in the nature of the mediation : merely its extent is increased, and the increase is fully warranted by a consideration of Mary's merits. While many *a priori* reasons could be given to show the fittingness, the equity, the harmony[5] of the arrangement whereby all graces should come to men through Mary, ultimately the actual existence of this arrangement depends upon the positive plan of God. And it is, as we noted above, the *teaching of very* many theologians and others that God has actually so arranged His plan ; has arranged that all graces should be given through, and only through the hands of Mary. Pope Pius IX has written :[6] ' Let us hold it for certain that every hope the world has, every grace, every means of salvation comes from her. . . . Such is the will of Him who has willed that we have all graces through Mary.' If, then, God has so planned His economy of Redemption and the sanctification of men—any *difficulties* that

[1] *In Hi. D. Thomae* (qq. 21-59), d. 23, 2, 3.
[3] Encyclical, *Ad diem ilium.*
[4] Some theologians attribute a higher kind of mediation to Mary, cf. Cleary, art. cit., p. 488.
[5] Cf. Smith, op. at., pp. 151-53.
[6] Cf. Smith, op. cit.
[6] Encyclical *Ubi Primum;* cf. St. Bernard, *P.L.* 183, c. 441.

seem to be present in this scheme must have a satisfactory solution—even if we cannot easily find it.

Our correspondent mentions the difficulty of reconciling Mary's Universal Mediation with, presumably, our doctrine regarding the sacramental causality of grace. We do not hold that Mary must intervene between the placing of the sacramental act and the causing of grace. An explanation on these lines would be very difficult, if not impossible. We think that Mary rather stands behind the Sacraments—if we may so put it; that, by her intercession, she brings about that complex combination of circumstances in which the valid and fruitful reception of the Sacraments is made possible.[1]

We might easily have written very much more on all the points of this question. But we think that we have sufficiently covered our correspondent's difficulties. We think, too, that what we have written contains a sufficient answer to the suggestion that the doctrine of the Universal Mediation is new-fangled, or that devotion based upon it is novel. We do not deny, we have in fact asserted, that there has been a steadily increasing interest in the doctrine in recent years. But one who is no mere amateur theologian might be expected to know enough about the laws of dogmatic development and doctrinal history not to wonder at this, still less to condemn a doctrine for it. We recommend this theologian to study the history of the dogma of the Immaculate Conception. One final point: it is suggested that this doctrine of the Universal Mediation of the Blessed Virgin may prove a stumbling block to possible converts. We question the accuracy of that suggestion. For one thing the doctrine is not defined, and a convert would not be bound to accept it. But that point apart, we think that an accurate explanation of the meaning of the doctrine—not, of course, as a dogma of faith—would help to bring home to sincere enquirers the wonderful harmony of the divine economy of grace and Redemption, the ineffable kindliness of Providence

[1] Smith, op. cit., p. 165, writes: 'It must not be imagined that the efficiency of the Sacraments is made conditional upon Mary's intervention; for if a sacrament is validly administered and duly and properly received, nothing can prevent it from producing its effect on the soul. But we cannot receive the grace unless the sacrament is administered; and it is Mary's intercession which ensures that the sacrament is available. Moreover, the valid administration of the sacrament calls for the due rite to be used as well as the requisite intention in the minister; and Mary is at hand to see that these conditions are not lacking. Above all, the fruitful reception of the sacrament requires the necessary dispositions; and Mary's prayer obtains that we do not frustrate the sanctifying virtue that flows from the Sacred Side of her Son.'

which, in Newman's phrase, gives us not merely Jesus for our food but Mary for our nursing Mother. We are of opinion that an accurate explanation of the doctrine will be productive of good, will be a help rather than an obstacle. It could hardly be otherwise. Doubtless, loose and inaccurate statements do harm. But that would be true of any doctrine.[1]

We are glad to have had this question submitted to us and to have been given an opportunity of writing on it here. It is good to have attention drawn to the doctrine. Discussions on it, the raising of objections against it, the attempts to answer these objections, all serve, in their own measure, to bring it into prominence and to mark a stage of doctrinal development. Out of the welter of discussion and conflicting opinion, as has so often happened in the past, the truth will emerge triumphant.

SOME OBJECTIONS TO THE DOCTRINE OF THE UNIVERSAL MEDIATION OF MARY

I should feel grateful if you discuss the following difficulties, which occur to me, against the acceptance of the pious belief that all graces come to us through the hands of Our Lady.

(i) References to the grace of God abound in the writings of St. Paul. He begins nearly all his Epistles with some such formula as : ' Grace to you and peace from God our Father and from the Lord Jesus Christ.' There is never a mention of the Blessed Virgin. One might fairly expect that, if Our Lady is the Mediatrix of all graces, one should find at the beginning of some one Epistle a formula like : ' Grace to you from God and from Jesus Christ through the hands of Mary His Mother.' Yet one looks in vain for any such formula.

(ii) In Cardinal MacRory's *St. John* we read : ' Regarding the common belief that St. John at the foot of the Cross represented the whole human race . . . it must be said that the Fathers make no mention of this view.' Is this statement correct ?

(iii) It would appear that the upholders of the pious belief in question make an unfair use of the fact that there has been a development in Catholic doctrine. In other words they are guilty of what

[1] The doctrine is clearly expressed in the prayer of St. Bernard for Dante at the end of the vision of Paradise :

> ' So mighty art thou, lady ! and so great
> That he who grace desireth, and comes not
> To thee for aidance fain would have desire
> Fly without wings. Nor only him who asks
> Thy bounty succours, but doth freely oft
> Forerun the asking.'
>
> *Paradise,* Canto xxxiii—Translation by Cary.

looks very like a *petitio principii*. They have got to prove that the belief in question is a genuine development ; they may not assume it.

Aidan.

An adequate reply to the points raised by 'Aidan' would take much more space than is available here. In a sense his third point is the most fundamental, but we shall try to answer him briefly in the order followed in the query'.

(i) It is, of course, true that one searches in vain for any reference to the Blessed Virgin as Mediatrix in the salutation formulae used by St. Paul in his Epistles. But, we must ask, is it fair immediately to conclude therefrom that St. Paul was unaware of, or would necessarily reject, the doctrine which has come to be called the Universal Mediation of Our Lady ? We are not at all arguing here for the truth of this doctrine. We are only concerned to show that the silence of St. Paul cannot be construed as a well-founded, and still less as an insuperable, objection to the doctrine. It is a commonplace to say that an argument from silence is always weak and precarious. Such an argument is worthless, when the silence on which it is based is, what we would call for want of a better term, negative—that is, mere failure to speak or to mention something when no question has been asked about it, or no statement is demanded by the circumstances. Even positive silence, that implied in the true sense of the phrase : silence gives consent, only provides in particular circumstances a presumption that a certain conclusion should be drawn.

St. Paul's silence regarding the Universal Mediation of Mary is, we submit, a negative silence. He does not mention the Blessed Virgin in the salutation formulae. But why should he have done so ? The formulae are not, and were never meant to be, a complete statement as to the manner of the distribution of grace. They refer simply to the primary source and origin of all the graces that are given to men. They refer to God the Father and to Jesus Christ the Redeemer. On the line taken by our correspondent it might equally well be said that St. Paul rejected the doctrine of the Immaculate Conception. In the Epistle to the Romans[1] he states that all men incurred the sin and the condemnation of Adam. No exception is made.

It must be remembered that even the combined Epistles of St. Paul do not contain a complete statement of Christian

[1] Cf. Chap. v. 12, 18, 19.

teaching.[1] The purpose of these letters was something entirely different. They were occasional documents written to explain some specific point of doctrine, or to deal with some special contingency in one of the Pauline churches. In his Epistles, St. Paul emphasizes particularly the doctrine that Christ is the one great Mediator between God and men ; that it was Christ, and He alone, who wrought the redemption of all men and who won back for us the grace of God which we had lost by Adam's sin. Naturally enough, then, in his frequent references to the provenance of grace he mentions constantly God the Father and the great Mediator, Jesus Christ. It may not be out of place to remark at this point that the doctrine of the Universal Mediation of Mary does not, and cannot be allowed to, detract from the Pauline doctrine that Christ is the one Mediator between God and men. For Mary had to be redeemed.[1] Thus her mediation is subordinate to, and dependent on, the mediation and redemption effected by Christ. In brief, her mediation is of a different order from that of Christ and can, perhaps, best be understood as an intercessory mediation.

(ii) It is a fact that, in the extant commentaries of the Fathers on the text 'Woman, behold thy Son,' there is no statement which refers to St. John as representing the whole human race at the foot of the Cross. Perhaps, however, some oral tradition to this effect survived. At any rate since the Middle Ages, in the writings of many saints and theologians this representative capacity has been attributed to St. John.[3] Indeed, this has come to be a not uncommonly accepted interpretation of the text in question. Many of the Popes have wholeheartedly proclaimed it. Leo XIII, for instance, has written that : ' In John, according to the constant sentiment of the Church, Christ designated the whole human race—especially those who are united to Him by faith.'[4] The import of this interpretation is that, at the foot of the Cross, Mary was appointed the spiritual mother of men.

The fact that the Fathers do not mention the representative character of St. John does not, of course, *imply that this* interpretation of the text is false or unacceptable. The Fathers

[1] Indeed, all books of the Bible, taken together, do not give us a complete statement of Christian doctrine. For us tradition, oral and written, is a source of revelation.

[2] Cf. Encycl. *Mystici Corporis Christi*—Eng. trans. C.T.S. (London), p. 27.

[3] Lagrange, *Évangile selon Saint Jean,* writes : ' D'après la pieuse opinion si douce aux chrétiens, Jean représentait ici tous les fidèles auxquels Marie a été dès lors donnée comme mère '—p. 494.

[4] «Encycl. *Adjutricem populi Christiani,* 5 September, 1895.

do not reject it. They simply do not seem to have adverted to it as a possible meaning of the words.[1] And, doubtless, there are many passages in Sacred Scripture the full content, the *plenior sensus,* of which has not been discovered and elucidated by the Fathers or, indeed, by subsequent commentators. In their discussion of the text, which is in question here, the Fathers seem to have been preoccupied with the obvious literal sense and the implications thereof. They insist particularly that the text proves that 'the brethren of the Lord', mentioned in the Gospels, were not the sons of Mary. For if they had been, the Blessed Virgin would not have been committed to the care of St. John. So the patristic argument runs.

Independently of the incident at the foot of the Cross, the Fathers do teach clearly that Mary is the spiritual mother of the faithful. We find testimony for this teaching in many of the early writers—in St. Irenaeus, St. Epiphanius, St. Ambrose, and particularly in St. Augustine, who writes :[2] 'Mary is not the spiritual Mother of our Head, the Saviour. It is of Him that she is spiritually born. . . . But she is the mother of us, His members, because, by her charity, she co-operated with Christ to give birth to the faithful in the Church.' It is this doctrine that Mary is our mother which provides an important basis for, and explanation of, her Universal Mediation. And the doctrine of Mary's motherhood of men does not at all rest solely, or even primarily, on the representative character of St. John on Calvary. It is independent, therefore, of the interpretation of the words : 'Son, behold thy mother.'[3]

(iii) Our correspondent is, of course, quite right in describing the Universal Mediation of Mary as a pious belief. That is its juridical status. It is not a defined doctrine and hence its truth may be freely discussed by Catholics. When a doctrine is defined it is proposed for our belief as a truth which has been divinely revealed. Thus every defined doctrine must be contained in revelation. But it may be contained there explicitly or implicitly. And implicit revelation may be formal or

[1] In commenting on the text Origen (Migne, *P.G.,* 14, 29) docs refer to the spiritual maternity of Mary. But he explains it as arising from the fact that the perfect Christian must be, as John was, another Jesus.

[2] Migne, *P.L.,* 40, 399 ; cf. Smith, *Mary's Pari in our Redemption,* c. x. ; Vassall—Phillips, *The Mother of Christ,* c. iv.

[3] Lagrange, loc. cit., writes : 'Il n'y a donc pas lieu de changer l'exégèse admise par les catholiques les plus conservateurs sans pour cela porter atteinte à la pieuse croyance des fidèles sur la maternité spirituelle de Marie établie théologiquement moins en vertu des paroles de Jésus sur la Croix qu'ensuite de la qualité des chrétiens, frères adoptifs de Jésus, devenant même mystiquement d'autres Jésus.'

virtual.[1] As yet a point of teaching may have only the status of a pious belief, but may, at the same time, be objectively part of the revealed deposit. This, for instance, was the position of the doctrine of the Immaculate Conception before the solemn definition in 1854. The doctrine was always contained, though, perhaps, somewhat obscurely, in revelation. The definition of the Church made this perfectly clear. In Catholic teaching we have, then, development of dogma. But this by no means implies any change in existing revelation or any new revelation. Development of doctrine consists in this, that, with the progress of study and other factors, there is a fuller understanding of the original, unchanged and unchangeable, content of revelation. What was hitherto only implicit becomes explicit, what was hitherto obscure becomes clear. The development has been well described as an unfolding process. The occasions of this unfolding may be manifold—theological study, devotional impulse, etc.—but the cause is the teaching authority of the divinely guided and infallible Church of Christ.[2]

We find to-day among the faithful a widespread living belief in the doctrine of the Universal Mediation. This belief has been encouraged by many statements of the Saints, of Popes and of other ecclesiastical authorities. This fact can be the starting-point for an examination of the doctrine in relation to revelation.[3] The theologians ask themselves : Is this doctrine new ? Or is it something of which we can find traces in the *fontes* of revelation ? There is no *petitio principii* here. There is no assumption that the doctrine is defined—which, of course, it is not ; no assumption that the doctrine is contained in revelation—no assumption, therefore, of a genuine development of doctrine ; no final assumption even that the *doctrine is true.* The point of departure for the inquiry is a fact—an existing belief. The search is for the origin, the history, the establishment of the truth (or falsehood) of this belief. Surely this inquiry is neither illogical nor unscientific ?

THE IMMACULATE *CONCEPTION AND THE* DEBT OF *CONTRACTING ORIGINAL SIN*

I have a pamphlet *De L'Absolue Primauté et Royauté Universelle de Notre-Seigneur Jésus-Christ*—an *encyclical letter of* the Most Rev. Fr. Léonard-Mary Bello, Minister General of the Ordinary

[1] Cf. Pierse, *Virtues and Vices, c.* xxix.
[2] *Cf.* Smith, *The Teaching of the Catholic Church, i.* p. 34.
[3] Cf. Aubron, article in *Nouvelle Révue Théol., Lxi. (1938), pp.* 5 ft

Friars Minor. Dealing with the Franciscan idea that Jesus and Mary were preordained as the crown of creation irrespective of the Fall, he says: 'A aucun théologien il n'échappera qu'une thèse ainsi posée impliquait la Conception Immaculée de la Très Sainte Vierge, *son exemption de la dette même du péché originel* . . .' (my italics). I thought that at the very least one had to admit Her being under the 'remote' debt. Would you kindly comment?

Fautor Franciscanus.

We are grateful to our correspondent for introducing us to the pamphlet mentioned in his query. Through the kindness of a Franciscan Superior we have been able to secure a copy of the French translation (from which our correspondent quotes) and also of the Latin original.

Our readers are aware of the Scotist thesis that, in the divine designs, independently of Adam's Fall, the Incarnation of the Second Person of the Blessed Trinity was appointed as the climax of God's relations with men.[1] In the course of the encyclical letter referred to in the query this Scotist teaching—which has always had an attraction for us—has been eloquently set out, and its easy and close relation to the doctrine of the universal Primacy and Kingship of Christ is convincingly established. In this part of the letter we can catch the echo of the wingefl words of St. Paul, when he wrote of Christ to the Colossians: 'Who is the image of the invisible God, the firstborn of every creature. . . . All things were created by Him and in Him. He is before all. By Him all things consist. He is the head of the body, the Church: Who is the beginning, the firstborn from the dead, that in all things He may hold the primacy.'[2]

Developing the Scotist thesis, Father Bello points out that, from the very beginning, the Primacy and Kingship of Christ over all creatures, His Headship of the Mystical Body were divinely determined. And in this divine decree the Blessed Virgin—'in suo utique ordine, videlicet sub Christo et per Christum'—was associated with Christ.

Cum insuper 'uno eodemque decreto' cum Christo antecedenter et independenter a peccati praevisione, tamquam Mater Christi et Regina

1 'Affirmant Scotistae rationem propter quam Verbum incarnari voluit esse ostensionem divinae bonitatis in tam magnifica creationis completione, absque respectu ad lapsum Adae.' Van Noort, *De Deo Redemptore,* n. 7. Cf. Bello, *De Universali Christi Primatu atque Regalitate,* p. 13. 'Asserit B. Duns Scotus . . . universalem Dei oeconomiam circa mundum ad Verbum Incarnatum tamquam ad suum proprium finem ordinatam esse.'

• *Coloss.* i, 15-8.

mundi praedestinata sit B. Virgo ; eo ipso Maria totius corporis mystici Mediatrix universalis constituitur. . . .'[1]

In this context we find the passage quoted in the query. We shall give the sentence again, and in full, since the final words, omitted by our correspondent, merit comment.

A aucun théologien il n'échappera qu'une thèse ainsi posée impliquait la Conception Immaculée de la Très Sainte Vierge, son exemption de la dette même du péché originel et de l'immunité du péché personnel.[1]

But in the Latin original we read :[3]

Nullus denique est inter theologos qui non videat ex sententia de primatu Christi et eius Beatissimae Matris tum Immaculatam Conceptionem Virginis, tum etiam exemptionem a debito saltem proximo personalique peccatum originale incurrendi legitime inferri.

Thus, at a glance, it is clear that the French translation is not literal. Firstly, in it there is reference to the exemption of the Blessed Virgin from the debt—without the qualification contained in the Latin—of original sin. In justification of the translation, it might be said that its author possibly envisaged a distinction between the *debt of original sin* and the *debt of contracting original sin.* He may have understood by the former term the *actual infection of original sin* or, alternatively, what is generally called a proximate debt—*debitum proximum contrahendi peccatum originale* ; and, by the latter, a remote debt. The translator, like the author of the original Latin, wished to express the view that the Blessed Virgin was exempt from *the actual infection* as well as from any proximate debt, and so he wrote of ' son exemption de la dette même du péché originel.' This is merely a suggested interpretation of a phrase which, at first sight at least, seems to contradict the accepted teaching. In the sentence quoted from the translation there is a second point of divergence from the original. In the latter the adjective *personal* qualifies the word *debt.* In the translation the new idea of immunity from personal—presumably actual—sin is introduced into the sentence. The translator appears to have *missed the* special force of the adjective *personal* as given in the original Latin.[5] A brief explanation of the relevant point of doctrine will throw further light on the foregoing remarks.

[1] Op. cit., p. 35.
[2] p. 33.
[3] p. 36.
[4] All the authors, of course, make die distinction between actually contracting original sin and having the debt of contracting it. Cf. Van Noort op. cit., n. 242 : ' Ideo dici solet, Mariani quamvis de facto originale peccatum numquam contraxerit, habuisse debitum illud contrahendi.'
[5] Cf. *infra.*

It is the accepted teaching of theology that the Blessed Virgin was under a debt, to some degree, of contracting original sin.[1] She was preserved from contracting this sin through the merits of Christi, the Redeemer of the human race.

Definimus . . . beatissimam virginem Mariam . . . intuitu meritorum Christi lesu, salvatoris humani generis, ab omni originalis culpae labe (esse) praeservatam immuncm.[2]

The reference in the definition to the merits of Christ, the Saviour, implies that Mary was redeemed—*sublimiori modo, redemptione praeservativa,* of course, but, none the less, really redeemed.[3] As Palmieri has it :[4]

Sepositis meritis Christi Redemptoris, B. Virgo, eo quod filia Adac, habuisset peccatum vel non ? Si affirmas ponis debitum . . . ; si negas, negas fuisse eam redemptam, seu intuitu meritorum Redemptoris praeservatam a peccato.

Theologians are not agreed, however, as to the precise nature of the Blessed Virgin's debt of contracting original sin. There are many variant explanations. We shall indicate some of the principal lines—in particular those which have relevance to the quotation given in the query. Many theologians, among them the Neo-Scotists, hold that the debt was only remote ;[5] that God, in view of the foreseen merits of Christ, exempted Mary from the decree whereby the sin of Adam, if he disobeyed, would be transmitted to all his posterity. But the majority of theologians, including Scotus, teach that the debt was proximate.[6] That is to say, Mary was not exempted from the *law* regarding the transmission of Adam's sin to all his children—but she was exempted, by a special privilege, from the actual application of this law, so that, from the very first moment of her conception, her soul was endowed with sanctifying grace. It follows clearly, we think, that this debt, even though it is held to be proximate, did not ever formally exist in the person of the Blessed Virgin—but only radically, inasmuch as Mary was a human being linked

[1] Cf. Mazzella, *De Deo Creante,* n. 1130. [2] De fide est B. V. Mariam non contraxisse peccatum originale ; sed nec dubitari potest eam habuisse aliquod debitum illud contrahendi ; siquidem praeservata fuit immunis a culpa intuitu meritorum Christi, ac proinde . . . vere redempta.' This statement of Mazzella is interesting in view of his peculiar explanation of the ' debt '—cf. *infra,* 557.

[2] Definition of Immaculate Conception, Pius IX, 1854, Bull *Ineffabilis,* Denz.-Bann., n. 1502.

[3] Van Noort, op. cit., n. 243 writes : ' Secundum fidem catholicam etiam b. Virgo redempta est per Christum.'

[4] *De Deo Creante,* thesis lxxxix.

[5] Cf. Merkelbach, *Aiariologia,* n. 51; cf. Mazzella, op. cit., n. 1133.

[6] Cf. Palmieri, loc. cit.

up by natural generation with Adam, the fount and source of original sin.

Debitum peccati non ponit necessario aliquid in B. Virgine, sed ex culpa protoparentis mera necessitas est ut omnes qui ab eo generantur peccatum habeant, ac proinde etiam Maria, si sibi ipsi fuisset relicta. At si debitum non est formalitcr in Virgine ubinam est responendum ? Existit radicaliter, scii, in causis : in Adam, eiusque actuali peccato, et in facto naturalis generationis ex quibus Mariae debitum fuit ut ipsa peccatum contraheret nisi Deus impediret; hoc tamen Ipse impedivit.[1]

It is this formal or personal debt that is denied in Father Bello's encyclical. The reference is not at all to personal, actual sin, as is suggested by the French translator.

Some theologians go so far as to hold that Mary's debt to contract original sin was never actual or absolute but only, at most, conditional or potential. This they explain by saying that, by a divine decree, the Blessed Virgin was not included under the moral headship of Adam in relation to his period of probation and his Fall. In other words, Mary would have been under the debt of contracting original sin if she had not been antecedently exempted, by divine arrangement, from solidarity with Adam. Thus Mazzella, who considers that we might conceive God as formulating His decree along these lines :[2]

Decerno etiam Adamum Caput Morale posterorum quorum voluntates alligo ipsius voluntati in ordine ad observationem vel transgressionem praecepti, quod ei imponere volo de non comedendo pomo. Excipio tamen hanc Virginem Mariam, quam Matrem Christi cum hoc gratiarum cumulo eligo, et quidem ob merita eiusdem Christi Redemptoris.

In our view, such statements go too far. The debt that is contemplated in them is one which would have existed in other circumstances but never did exist in fact. It is not then an objective debt in any real sense, a debt which could be described as requiring a real and true redemption—yet, it may be remembered, this is Mazzella's own description in another passage.[3] To quote Palmieri again;[4] 'nec debitum debiti fingi potest; secus iremus in infinitum.' In his conclusion on the question we have been discussing, Merkelbach gives a summary which is well worth quoting and which will serve to round *off* this reply :

Maria itaque non peccavit nec gratiam amisit, sed Adam amisit pro ipsa. Non fuit affecta quadam intrinseca necessitate et morali exigentia contrahendi

[1] Merkelbach, op. cit., n. 57.
[2] Op. cit., n. 1135.
[3] Cf op· Clt·» n· USO—cf. *supra,* 556.
[4] Loc. cit.

peccatum, seu inquinata quadam dispositione qua esset peccati digna, gratiae indigna ; sed ex Adae culpa fuit ipsi debitum et necessitas ut inquinaretur. Quod debitum ad hoc reducitur : considerata naturali origine, non solum potuisset aut debuisset, sed vere potuit et debuit habere peccatum, ac istud etiam contraxisset, nisi Deus exceptionaliter legem peccatum incurrendi in ea suspendisset.[1]

IRISH TRANSLATION OF *'I AM THE IMMACULATE CONCEPTION.' TERMINOLOGY IN EXPRESSING THE DOCTRINE OF THE TRINITY

(1) Is it correct to give 'is mé gain jam coimeAt' as the Irish translation of 'I am the Immaculate Conception' ? The word jem is exactly equivalent to *foetus,* and surely *foetus sine macula* has not the same meaning as *Conceptio Immaculata.*

(2) The following statement has appeared in print : 'The Father is God in His own way, not as the Son is God, nor as the Holy Ghost is God.' Some critic found fault with this, saying : 'If this is not heresy, it is the next thing to it. It might pass if we wrote "Person" instead of "God" : The Father is a Divine Person in His own way, etc.' But it has been pointed out that what the critic condemns is found in Tanquerey (vol. ii. p. 180), who says : 'Pater est Deus quatenus active generat Filium ; Filius est Deus quatenus a Patre genitus ; Persona Spiritus Sancti est Deus quatenus spiratus tum a Patre tum a Filio.' What would you say about this difference of opinion ?

Quaerens.

(1) The Immaculate Conception means that the Blessed Virgin Mary, by a singular grace and privilege of Almighty God, in virtue of the merits of Jesus Christ, the Saviour of the world, was, from the first instant of her conception, preserved free from the guilt of original sin. It was in these terms that the doctrine was set out in the solemn definition by Pope Pius IX in 1854.[2] It is defined, then, that from the very first moment of the union of Mary's soul and body in the womb of her mother, that is, from the moment she began to exist, she was preserved from the guilt of original sin and endowed with grace. The phrase *in primo instanti suae conceptionis* was expressly used to

[1] Op. cit., n. 59.

[2] The exact words of the definition are : 'Definimus doctrinam quae tenet, beatissimam virginem Mariam in primo instanti suae conceptionis fuisse singulari Dei omnipotentis gratia et privilegio, intuitu meritorum Christi Iesu, salvatoris humani generis, ab omni originalis culpae labe praeservatam immunem, esse a Deo revelatam, atque idcirco ab omnibus fidelibus firmiter constanterque credendam.'—Denz., 1502. Bull *Ineffabilis.*

exclude the doctrine of those theologians who held that at the moment Mary's soul was united to her body she—in common with all the children of Adam—contracted original sin which was immediately, in her case, washed away.[1] In other words, it is defined doctrine that Mary was immaculate—absolutely free from the taint or guilt of any sin every single moment of her pre-natal life. This is an essential element of the doctrine. The reason for our repeated insistence upon it will be obvious later.

We are asked if ' 1s mé gem gan ceirheat' is a correct Irish translation of ' I am the Immaculate Conception.' (One wonders, in passing, why the translator did not give, 'ismé An $ein gan ceirheat.' The definite article seems to be demanded.) The question really reduces itself to this : Is ' gein ' a correct translation of ' conception ' in the context ? The word ' gein,' as our correspondent points out, means *'foetus,'* ' the person conceived,' ' the result of conception.' It might, therefore, describe the unborn babe at any moment, and not necessarily from the first moment of its life in the womb. Hence it would seem to be correct Irish usage to speak of a child sanctified in its mother's womb as ' gein gan ceiriieal.' This phrase, then, does not bring out what we have described as an essential point of the defined doctrine, namely, that Mary was immaculate from the first moment of her conception, that she was conceived without sin. It is not, therefore, in our opinion, a doctrinally accurate translation of *Conceptio Immaculata.* That is not to say that the phrase ' gein gan ceiriieal ' may not be attributed to the Blessed Virgin.[2] She was, indeed, 'gein gan ceirheat ': She was sanctified in her mother's womb—but she had a much greater and unique dignity, which we describe as her Immaculate Conception. Canon P. O'Leary addressed[3]4a hymn to Mary entitled 'x*X* gein gan ceiriieal.'

It may be asked how ' *I* am the Immaculate Conception ' might be accurately translated into Irish. It seems to us that the clearest, if somewhat periphrastic, translation would be ' 1s mé an c-é a geineaO gan ceiriieal.' A more brief, but accurate, rendering would be, we think, ' Is mé an geineariiain gan ceiriieal.' Canon O'Leary translates 'Blessed be her (holy and) Immaculate Conception ' thus :[4] ' niola-ô le n-a gaOJit gan ciriieal,' and the invocation from the Litany : ' Queen

1 Cf., for a discussion of the controversies in regard to the doctrine, Van Noort, *De Deo Redemptore,* nn. 252-58. Cf. also previous reply.

2 It expresses what is true, but not all of what is true.

3 mo 61150 êun Oé, I. 157.

4 Ibid., p. 75.

conceived without original sin,'[1] 'xX üanRlgin λ gA»At> gan peaca An c-sinsiR.' Canon D. O'Connell translates the verse from the Divine Praises as follows *[2] ' molar» Le n-A t1aotfi-$at)A»l gan Cenfieal.' In the Irish Catechism of the Diocese of Raphoe, published in 1937, we find the verse just mentioned rendered thus:[3] 'go mtJeannuigùeaR a getneaiftAin îlaomta gan smAL,' and the petition from the Litany is given as :[4] ' xX t)Ainfifo$An a geineat» gan peacar» na sinnseaR.' In Dr. McHale's Catechism this petition is translated :[6] '4 tflume a geineatt ζAη peacar».' Dr. O'Flaherty, in his Irish translation of the Maynooth Catechism, has in the Divine Praises :· ' molar» Le n-A geineaifiain tlaoriiûa gan smAl,' and in the Litany:[7] 'xX t)Ainnfo$An a gaüar» gan peacar» aπ c-sinnstn.' In Appendix XIX of the Statutes of the Provincial Synod of Tuam, 1933, the version in the Divine Praises[8] is the same as that just given ; in the Litany we have® 'xX bainRlogan a geineAt» gati smAl.'

The above quotations are meant to be representative not exhaustive. We may, however, add that we have discovered no writer, other than Canon O'Leary, who gives the translation which forms the subject of this query. In regard to Canon O'Leary's use of the phrase : 'xX gein gAn ceimeal,' it may be said that he need not necessarily have meant to express thereby the doctrine of the Immaculate Conception. Moreover, in the hymn where the phrase occurs the doctrine has been accurately expressed in the context, in fact in the preceding line, which runs: ' Oo gat»Ail-se, *a scôr*, gAn ceitfieal.'[10]

(2) We do not agree with the critic quoted by our correspondent. The statement : ' The Father is God in His own way, not as the Son is God, nor as the Holy Ghost is God,' is neither heresy nor the next thing to it. It seems to us to be a very reasonable attempt to express in necessarily inadequate human language, the Doctrine of the Trinity, viz., the distinction of Persons, and the general manner of that distinction, in the unity of the Divine Nature. There is, in the statement, no denial, express or implied, of that unity. The amendment suggested by the critic hardly expresses what the criticized

[1] Ibid., p. 116.
[2] An CeagASC CRÎoscanôe, *war d'orouis* pius X pÂpA, L. 114.
[3] P. 7.
[4] Ibid., p. 64.
[5] p. 12.
[6] p. 19.
[7] p. 164.
[8] p. 114.
[9] Ibid.
[10] Op. cit., p. 157.

statement was intended to express; in fact, it seems to us that this amendment conveys very little positive information. It follows from what we have written that we regard the statement of Tanqucrcy as an accurate expression of the doctrine. The statement is clarified in its context. Incidentally, on a first reading, we might have expected the author to have written *Deus est Pater,* etc. But his meaning is clear.

The following passage throws some light upon the criticized statement and the quotation from Tanquerey. 'Now, as there is in God nothing accidental, a divine relation is not a superadded thing that possibly might not exist. On the contrary, it is identical with God's essence, so that God *the Father is not God except in so far as He is the Father.*

Finally, then, a divine Person may be defined as a subsistent relation, considered as subsistent, or, God subsisting in an incommunicable relation. God, because each one is God, and all three are equally and perfectly God, but God in an incommunicable relation, since *each Person has His own way of* being God and of possessing infinite perfection, the Father having it from none and giving it to the Son by generation, the Son having it as begotten by the Father, and the Holy Ghost possessing it from the Father and Son by Spiration.'[1]

A POINT OF MARIOLOGY FROM ST. JOHN EUDES

An edition of *Le Cœur Admirable de la Très Sacrée Mère de Dieu* by St. John Eudes, published by Lethielleux, 1935, says: 'Nous recevons dans cet admirable Sacrement, une portion de sa substance unie hypostatiquement au Verbe divin, et incorporée en celle du corps adorable de son Fils, le bénin fruit de ses entrailles . . .' One knows that the *Imprimatur* and *Nihil obstat* are neither infallible nor irrevocable, but could a statement so apparently opposed to true teaching have escaped the censor unless there were some good way of explaining it? Would you very kindly comment?

S. R.

We have not seen the 1935 edition of *Le Cour Admirable de la Très Sacrée Mère de Dieu* to which our correspondent refers. But in the twelve-volume edition of the *Oeuvres Complètes* of St. John Eudes (Vannes: Imprimerie Lafolye Frères, 1908) volumes six, seven and eight contain the entire writings of the saint

[1] Breton, *The Blessed Trinity* (Eng. trans.), p. 118. Italics ours.

on devotion to the Sacred Hearts of Jesus and Mary.[1] These three volumes have the general title *Le Cœur Admirable* - - - as above. They are divided into twelve books. Eleven of these deal with the theory, history and practice of the devotion to the Immaculate Heart of Mary. In the twelfth book devotion to the Sacred Heart of Jesus is discussed. The passage quoted by our correspondent occurs in chapter four of the ninth book. The general theme of this chapter is the excellence of the Immaculate Heart of Mary as the Mirror of Charity. In the first section of the chapter, the author enumerates the qualities and perfections of the charity towards mankind with which the Heart of Mary overflows. These perfections are many. Mary's love for her children is a burning and all-consuming furnace, a dazzling sun, a charity that is vigilant, holy, strong, swift to help, mild and meek, a paradise of delight, generous, zealous, perfect, constant and invincible.

In elaborating the quality of meekness and mildness, St. John Eudes quotes St. Bernard, St. Ambrose and St. Augustine who use the scriptural metaphors of milk and honey to describe the love of Our Lady as a source of balm, delight and nourishment for her children. This leads St. John Eudes to analyse the relationship of this love with the Blessed Eucharist. He writes :

C'est cct amour du sacré Cœur de notre très bonne Mère, qui nous repaît et nourrit, dans la sainte Eucharistie, de trois mets précieux qui sont sa très sainte chair, son sang immaculé et son lait virginal.

And then follows the passage concerning which our correspondent raises his question. At first sight this passage does seem strange. But, in our view, it has, in the context, a fully orthodox meaning. The fundamental point in the author's mind was that the body and blood of the Incarnate Christ, which we receive in the Blessed Eucharist, were formed from the body and blood of Mary. There is, then, a true sense in which it may be said that Our Lady nourishes us in the Blessed Eucharist, and that in this sacrament we receive what was originally *une portion de sa substance*—that *portion* which was converted, in the processes and period of the beginnings of His incarnate life, into the body and blood of Our Lord. As St. John Eudes writes later in the same context :

[1] A second French edition under the title *Oeuvres Choisies de Saint Jean Eudes* appeared in 1935, and an English translation of this edition has been prepared in the United States. A volume entitled *The Admirable Heart of Mary* was published in 1948 (New York, P. J. Kenedy & Sons). This volume contains a translation of most of volumes six, seven and eight of the original French edition. But among the many passages omitted from the English translation is that to which our correspondent refers.

Ainsi cette Mère admirable nous repaît, dans la sainte communion, de son très pur sang, du sacré lait de ses bénites mamelles (en tant qu'elle nous y donne une substance en laquelle son sang et son lait ont été convertis) et de sa chair virginale, qui est contenue réellement en la chair adorable de son Fils Jésus, puisque saint Augustin écrit que le Verbe divin a pris sa chair de la chair de Marie et qu'il nous l'a donnée à manger pour notre salut : *De came Mariae carnem accepit et ipsam carnem nobis manducandam ad salutem dedit.* Car il ne perdit jamais entièrement la portion de la substance de son corps qu'il prit de sa divin Mère en naissant.

The more difficult point in the passage quoted by our correspondent lies in the reference to the hypostatic union. Here, indeed, the author uses language which, in some degree at least, might be liable to misinterpretation. Yet, on consideration of the text and context, the orthodox meaning emerges clearly. In theology the term hypostatic union is reserved to describe the unique union of the two natures, the human and the divine, in the one divine person of Christ, the Son of God. When, then, St. John Eudes speaks of a portion of the substance of the Blessed Virgin as being united hypostatically to the Divine Word he did not refer to a portion which still remained part of her but to that portion which, so to speak, had gone out from her to form the body of her Divine Son. The saint did not mean to suggest that portion of Mary's nature or substance was, while remaining an uncommunicated part of her, united hypostatically to the Divinity. Such a suggestion would indeed so obviously contravene Catholic teaching that it could not escape the censure of a *Censor deputatus* or of the *Relatores scriptorum Servi Dei.*[1] Rather did St. John Eudes mean, as the context makes very clear, that the body and blood of Christ, which were formed from a portion of Mary's substance, were united hypostatically to the Divine Word. That is to say, *it* was only when the portion of Our Lady's substance had been converted into the body and blood of Christ—*omnino postfactum conversionis*—that its hypostatic union with the Divinity took place. Perhaps the meaning of the passage quoted by our correspondent would be clearer, and there would be less danger of misinterpretation, if the order were slightly altered to read thus :

Car nous recevons, dans cet admirable Sacrement une portion de sa substance incorporée, et urne hypostadquement au Verbe divin, en *celle* du corps adorable de son Fils. . . .

[1] Cf. *Approbations,* quoted on p. 4 of the 1908 edition of *Oeuvres Computes* T. vii.

THE MEANING OF THE *ACIES* FORMULA

The Legion of Mary has a ceremony known as the *Acies* at which the legionaries and auxiliaries present themselves before a statue of the Blessed Virgin and pronounce the formula : 'I am all thine, my Queen, my Mother, and all that I have is thine.' Many people have worried about the objective meaning of this formula. They think that it signifies, especially the phrase 'all that I have is thine,' the transfer to Our Lady of all the merit, satisfactory and impetratory value of their works. Tanquerey, in his work on Ascetical Theology, says that such a transfer and consecration should be made only with great deliberation and on the advice of one's spiritual director. If a penitent becomes scrupulous and wishes to withdraw the transfer, how can it be done ? If the formula does not mean this consecration, what does it mean ? Does its meaning depend on the intention of each individual?

Pastor.

In *The Official Handbook of the Legion of Mary* the formula quoted by our correspondent is described as 'an individual act of consecration.'[1] And the words used in the formula can, indeed, signify that the speaker of them transfers to Our Lady all he is, and all he has, by way of merit and possessions, natural and supernatural. Furthermore, such an interpretation is strengthened by the fact that, elsewhere in the *Official Handbook,*[2] the formal compact of entire consecration and slavery to Our Lady—as advocated by St. Louis-Marie de Montfort—is regarded as satisfactorily expressed or summarized by the words : 'I am all thine, my Queen, my Mother, and all I have is thine.'

Yet it is clear from the general tenor of the *Official Handbook,* and from the teaching enshrined therein on the spiritual development of the legionary, that the formula recited at the *Acies* ceremony is not meant to be the formal compact of entire consecration and slavery to Our Lady. This entire consecration is recommended strongly to legionaries[3] as a development towards which they should aim—a development which would round off, and give a distinctive character to, their devotion to Mary'. But the de Montfort consecration is not regarded as a routine part or even as a necessary part of Legion spirituality.[4] As our correspondent notes, authorities such as Tanquerey[5] emphasize that an act of entire consecration should not be made

[1] p. 104. (We quote from the 1953 edition.)
[2] p. 332.
[3] *Official Handbook,* p. 142 and *alibi.*
[4] This consecration is described as 'desirable,' p. 142.
[5] Cf. *The Spiritual Life,* p. 93.

without reflection and advice. The necessity of careful preparation and consideration is obvious when one recalls the terms of the act of consecration composed by St. Louis-Marie de Montfort and recommended[1] to be used by legionaries who make the formal compact. Part of the form runs thus :[2] 'In the presence of all the heavenly court I choose thee this day for my Mother and Mistress. I deliver and consecrate to thee as thy slave, my body and soul, my goods both interior and exterior and even the value of all my good actions, past, present and future ; leaving to you the entire and full right of disposing of me and of all that belongs to me without exception according to thy good pleasure, to the greatest glory of God in time and in eternity '.

It has been very fairly asked, what do the words used at the *Acies* ceremony mean, if they do not imply some sort of formal transfer to Our Lady of all one's possessions, of all the merit and value of one's good works. It seems to us that the answer—or at least a possible answer—to that question can best be sought and found in the theological framework of the Legion. As our readers are aware, the doctrine of the universal mediation of Our Lady fills an important place within that framework, the doctrine that all graces come to men through the hands of Mary, and, thus, that everything a human being is, and has, in the supernatural order is due somehow to her mediation or intervention. The legionary formally declares his entire dependence upon Our Lady and, in return as it were, proffers himself as an instrument to be used by her to establish the reign of Christ in the world. These points are incorporated into the promise[3] made by the legionary on the occasion of his formal admission or reception into the Legion. And the primary *purpose* of the *Acies* ceremony is to recall these points to the mind of the legionary. In the *Official Handbook* we read :[4] 'The Acies is the great central annual function of the *Legion, so* that it is necessary to stress the importance of attendance on the part of every member. The essential idea of the Legion, upon which all else is built, is that of working in union with, and in dependence on, Mary, its Queen. The Acies is the solemn expression of that union and dependence, the renewal—individual and collective—of the Legionary declaration of fealty.'

[1] *Official Handbook, 0.* 331.

[2] *A Treatise on the True Devotion to the Blessed Virgin,* Eng. trans, by Faber, PP. *Cf. Official Handbook,* pp. 52-3. Cf. Bishop Suenens, *The Theology of the Apostolate, which is* a commentary on the legionary promise.

[4] p. 104.

In view of all this, it seems to us that the formula recited at the *Acies* ceremony is meant as, and may be taken to mean, a renewed avowal of the legionaries' acceptance of the doctrine of the universal mediation, of their dependence on Mary, of their determination to live the legionary life of service as instruments of Mary in the work of personal sanctification and in the apostolate to others.[1] In this interpretation, the formula does not imply the assumption of any new obligation : it is not a formal compact of entire consecration. In our opinion this should be made clear to the legionaries assembled for the *Acies.* It would be wrong to leave them under the impression that the formula they are to recite implies a formal transfer of all their possessions and merits to Our Lady. An explanation is particularly necessary since, as has been noted earlier, the words used are capable of expressing this formal transfer. An address by a priest on the significance of the consecration to Our Lady forms part of the *Acies* proceedings.[2] He should clearly explain the official meaning of the words so that those who use them may understand what precisely they are avowing. It should not be left to each individual to decide what he will mean by a formula, the recitation of which is part of an official ceremony. In matters of public worship the Church attaches great importance to the meaning of the formulae used. To leave it to each individual to decide what, or how much, he means by the public recital of the *Acies* formula would, we think, contravene the practice of the Church and would, moreover, open the way to indecision and scruples and would deprive the confessor or director of any objective criterion on which to base his judgment regarding consequent obligations.

[1] Suenens. op. cit., ch. viii.
[2] *Official Handbook,* p. 104.

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